

SHAH COMMISSION OF INQUIRY

(Appointed under Section 3 of the Commissions of Inquiry Act, 1952)

INTERIM REPORT I

March 11, 1978



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CHAPTER I

In exercise of the powers under Section 3 of the Commissions of Inquiry Act, 1952, the Central Government published on May 28, 1977, a notification appointing a Commission of Inquiry.

1.2 The notification reads as follows :

"MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 28th May, 1977

S.O. 374(E).—Whereas there is a widespread demand from different sections of the public for an inquiry into several aspects of allegations of abuse of authority, excesses and malpractices committed and action taken or purported to be taken in the wake of the Emergency proclaimed on the 25th June, 1975 under Article 352 of the Constitution;

And whereas the Central Government is of the opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making inquiry into a definite matter of public importance, that is, excesses, malpractices and misdeeds during the Emergency or in the days immediately preceding the said proclamation, by the political authorities, public servants, their friends and/or relatives and in particular allegations of gross misuse of powers of arrest or detention, maltreatment of and atrocities on detenus and other prisoners arrested under DISIR, compulsion and use of force in the implementation of the family planning programme and indiscriminate and high-handed demolition of houses, huts, shops, buildings, structures and destruction of property in the name of slum clearance or enforcement of town planning or land use schemes in the cities and towns resulting, *inter alia*, in large number of people becoming homeless or having to move far away from the places of their vocation.

Now, therefore, in exercise of the powers conferred by Section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952) the Central Government hereby appoints a Commission of Inquiry consisting of the following, namely,

Chairman—Shri J. C. Shah, Retired Chief Justice of the Supreme Court of India.

2. The terms of reference of the Commission shall be as follows :

(a) to inquire into the facts and circumstances relating to specific instances of—

- (i) subversion of lawful processes and well-established conventions, administrative procedures and practices, abuse of authority, misuse of powers, excesses and/or malpractices committed during the period when the Proclamation of Emergency made on 25th June, 1975 under Article 352 of the Constitution was in force or in days immediately preceding the said Proclamation,
- (ii) misuse of powers of arrests or issue of detention orders where such arrests or orders are alleged to have been made on considerations not germane to the purposes of the relevant Acts during the aforesaid period,
- (iii) specific instances of maltreatment of and/or atrocities on persons arrested under DISIR or detained and their relatives and close associates during the aforesaid period,
- (iv) specific instances of compulsion and use of force in the implementation of the family planning programme during the aforesaid period,
- (v) indiscriminate, high-handed or unauthorised demolition of houses, huts, shops, buildings, structures and destruction of property in the name of slum clearance or enforcement of Town Planning or land use schemes, during the aforesaid period,

Provided that the inquiry shall be in regard to acts of such abuse of authority, misuse of powers, excesses, malpractices etc. alleged to have been committed by public servants, and

Provided further that the inquiry shall also cover the conduct of other individuals who may have directed, instigated or sided or abetted or otherwise associated themselves with the commission of such acts by public servants;

(b) to consider such other matters which, in the opinion of the Commission, have any relevance to the aforesaid allegations; and

- (c) to recommend measures which may be adopted for preventing the recurrence of such abuse of authority, misuse of powers, excesses and malpractices.

3. The inquiry by the Commission shall be in regard to—

- (i) complaints or allegations aforesaid that may be made before the Commission by any individual or association in such form and accompanied by such affidavits as may be prescribed by the Commission, and
- (ii) such instances relatable to paragraph 2(a)(i) to (v) as may be brought to its notice by the Central Government or a State Government or an Union Territory for inquiry.

4. The Commission shall make interim reports to the Central Government on the conclusion of inquiry into any particular allegation or series of allegations and will be expected to complete its inquiry and submit its final report to the Central Government on or before 31st December, 1977.

5. The Central Government is of opinion that having regard to the nature of the inquiry to be made and other circumstances of the case, all the provisions of sub-section (2), sub-section (3), sub-section (4), and sub-section (5) of Section 5 of the Commissions of Inquiry Act, 1952 (60 of 1952), should be made applicable to the said Commission and the Central Government hereby directs under sub-section (1) of the said Section 5 that all the provisions aforesaid shall apply to the said Commission.

[No. II/16011/32/77-S&P(D.II)]

T. C. A. SRINIVASAVARDAN, Secy."

1.3 Subsequently, the Central Government issued the following notification extending the time for the completion of the Inquiry to June 30, 1978 :

**"MINISTRY OF HOME AFFAIRS
NOTIFICATION**

New Delhi, the 16th December, 1977

S.O. 544(E).—In exercise of the powers conferred by Section 3 of the Commission of Inquiry Act, 1952 (60 of 1952), the Central Government hereby makes the following amendment in the Notification of the Government of India in the Ministry of Home Affairs No. S.O. 374(E), dated 28th May, 1977, (relating to the Commission of Inquiry on excesses during emergency) namely :—

In para 4 of the said Notification for the words and figures "on or before 31st December, 1977" the words and figures "on or before 30th June, 1978" shall be substituted.

[No. II/18011/32/77-S&P(D.II) Comsec.]
MAHESHWAR PRASAD, Addl. Secy."

1.4 The Commission issued notices under rule 5(2)(b) of the Commissions of Inquiry Rules. Pursuant thereto, 48,500 complaints were received in the office of the Commission.

1.5 The Government of India made the services of the following officers and staff available to the Commission for investigation of the various complaints and other cases which came for scrutiny before the Commission :—

Sl. No.	Designation	Numbers Sanctioned	Numbers presently working
(1)	(2)	(3)	(4)
1.	Secretary	1	1
2.	Joint Secretary	1	—
3.	I.G.P.	2	2
4.	Director & equivalent	7	7
5.	Addl. I.G.	1	(Post converted into a D.I.G. who has taken over)
6.	Commissioner	1	1
7.	Under Secretary Class I senior scale equivalent-A.O.—S.A. to Chairman	42	35
8.	Junior Scale Officer/O.S.D.	66	30
9.	Accounts Officer	1	1
10.	Section Officers	5	5
11.	P. S. to Secretary	1	1
12.	Court Master	1	1
13.	Steno Grade 'B'	7	7
14.	Inspectors	38	35
15.	Steno Grade 'C'	15	13
16.	Assistants	10	10
17.	Sub-Inspectors	51	29
18.	Hindi Translator	1	—
19.	Steno Grade 'D'	41	28
20.	U.D.C.	43	39
21.	Junior Reception Officer	1	—
22.	L.D.C.	12	10
23.	Staff Car Driver	4	4
24.	Motor Cycle Driver	2	2
25.	Gestetner Operator	1	1
26.	Constables	96	62
27.	Peons	9	1 Peon & 55 Contingency paid staff making a total of 56*.
28.	Dafti	1	
29.	Jamedar	1	
30.	Farash	2	
31.	Sweepers	2	
32.	Contingency paid staff	38	

*includes 3 persons taken against vacant posts of Constables.

1.6 In a number of cases the records of the Government of India were called for by the Commission and investigations were directed by the Commission in regard to the matters appearing before it within any of the five heads of the Terms of Reference.

1.7 The Commission fixed July 31, 1977, as the last date for filing complaints. The Commission did not entertain any complaints received thereafter. The complaints received by the Commission were categorised as under :

- (I) Complaints which do not fall within the purview of the terms of reference of the Commission—to be filed and complainants informed accordingly.
- (II) Complaints which do not fall within the purview of the terms of reference of the Commission but contain serious allegations—to be referred to the Central/State Governments for inquiry and appropriate action.
- (III) Complaints falling within the terms of reference of the Commission but not serious enough to warrant inquiry by the Commission itself—to be referred to the Central/State Governments with a request to have them looked into at an appropriate level and action as deemed fit taken thereon under intimation to the complainants.
- (IV) Complaints falling within the purview of the terms of reference of the Commission which are serious enough but cannot be handled by the Commission's staff itself—to be referred to the Central/State Governments for an inquiry by a committee/authority appointed under section 11 of Commissions of Inquiry Act, 1952, and the findings and recommendations of authority to be submitted to the Commission for disposal as and when completed. The State Governments have also been requested to take whatever remedial action they deem fit in the meanwhile.
- (V) Selected complaints will be dealt with by the Commission through its own investigating agency.

1.8 From September 29, 1977 the Commission commenced hearing of oral evidence of witnesses in cases falling within its terms of reference and which were regarded as of sufficient importance.

1.9 Since the terms of reference did not name any individual or body of individuals as responsible for the commission of an excess as understood in a compendious sense, and the excesses were also set out in general terms, the Commission in the first instance invited persons, who appeared from the investigations made by the officials of the Commission

and from the complaints received, either to be responsible for the excesses or to be victims of the excesses, or being otherwise able to throw light upon the commission of the excesses, and examined those persons.

1.10 At that stage, the Commission requested the persons concerned to come before the Commission and to assist the Commission in regard to certain transactions. A large number of persons appeared in pursuance of the request of the Commission. Some of those requested did not choose to appear before the Commission, some appeared at certain stages and thereafter did not appear and raised objections after appearing before the Commission and declined to participate in the proceedings of the Commission.

1.11 Evidence of the persons who showed willingness to assist the Commission was heard in all but a very few cases, in open Session. In the larger public interests, in-camera sittings were held in a few cases for examining certain witnesses. If on a consideration of the evidence, it appeared to the Commission necessary to inquire into the conduct of any person or the Commission was of the opinion that the reputation of any persons was likely to be affected by the inquiry, the Commission issued notices to such persons giving them opportunities of being heard in the inquiry and to furnish to the Commission, statements relating to the matters specified in the notice under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972. The Commission also issued summons under section 8B of the Act affording them reasonable opportunities of being heard in the inquiry and to produce evidence regarding their versions. The Commission also afforded opportunities to these persons to cross-examine witnesses other than the witnesses produced by them and to address the Commission. The Commission also afforded opportunity to all the parties to be represented by legal practitioners.

1.12 After hearing the evidence of the persons to whom notices under section 8B were issued and of the evidence of the witnesses produced in support of the versions of those parties and also considering the evidence of the witnesses, who had been examined for the Commission and whose presence was requested by the parties to whom notices under section 8B had been issued, the Commission gave to the parties or their Advocates opportunity to address the Commission on the evidence.

1.13 It may, however, be observed that the request made by Smt. Indira Gandhi, to whom notices under section 8B had been issued, to examine the investigating officers, was not allowed because the investigating officers were neither witnesses to the transactions in regard to which the evidence was collected, nor were they witnesses for the Commission. No request was made to examine the investigating officers as witnesses in support of the version of Smt. Gandhi.

CHAPTER II

2.1 A few minutes before the midnight of June 25, 1975, the President of India proclaimed Emergency under Article 352 of the Constitution. The order promulgating the Emergency was published in the Gazette of India, Extraordinary, on the June 26, 1975. It reads :

NOTIFICATION

G.S.R. 353(E). The following Proclamation of Emergency by the President of India, dated the 25th June, 1975, is published for general information :—

"PROCLAMATION OF EMERGENCY"

"In exercise of the powers conferred by clause (1) of Article 352 of the Constitution, I, Fakhruddin Ali Ahmed, President of India, by this proclamation declare that a grave emergency exists whereby the security of India is threatened by internal disturbances."

2.2 There was, however, already in force a Proclamation of Emergency, which was issued on December 3, 1971, by the President of India on the ground that the security of India was threatened by external aggression. Thereafter on December 4, 1971 the Defence of India Rules, 1971 were published.

2.3 By virtue of Article 358 of the Constitution freedoms guaranteed under Article 19 of the Constitution restricting the power of the State to make any law or to take any executive action which the State would but for the provisions contained in Part III be competent to make or to take, remained suspended till the withdrawal of the Emergency proclaimed on June 25, 1975.

2.4 After the declaration of Emergency, the President of India issued an order under Article 359 of the Constitution on June 27, 1975, suspending the right to move any court for the enforcement of fundamental rights conferred by Article 14, 21 and 22 of the Constitution.

2.5 The following important statutory provisions were made :—

1975 :

1. *The Defence of India (Amendment) Act, 1975* (No. 32 of 1975) dated July 31, 1975.

This Act extended the provisions of the Defence of India Act, 1971, till the proclamation of Internal Emergency lasted and for a period of six months thereafter. It also added words like internal security and internal disturbances in the preamble of the principle Act.

2. *The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1975* (No. 35 of 1975) dated August 1, 1975.

This amendment provided for the following :—

- (a) no detention order under the Act should be invalid or inoperative merely because some of the grounds of the order are vague, non-existent, not relevant or invalid for any reason;
- (b) no person detained under this Act shall be released on bail, bail-bond or otherwise;
- (c) the detention could be made for dealing effectively with the Emergency and in such contingency no grounds need be conveyed to the detenu.

3. *The Maintenance of Internal Security (Amendment) Act, 1975* (No. 39 of 1975) dated August 5, 1975.

This amendment provided for :—

- (a) revocation of a detention order shall not bar making another detention against the same person;
- (b) person detained under section 15 shall not be released on bail, bail-bond or otherwise; and
- (c) a new well-known section 16A was added barring provisions of grounds and approach to a law Court.

4. *The Election Laws (Amendment) Act, 1975* (No. 40 of 1975) dated August 6, 1975.

This amendment provided for :—

- (a) every case of disqualification under section 8A shall be referred to the President who could condone it in consultation with the Election Commission;
- (b) Section 77(i) of the Act was amended to replace date of publication of the notification calling the elections by words "the date on which he has been nominated" and also excluding the actions of the government servants in normal discharge of their duties like making arrangements etc.;
- (c) publication in gazette notification regarding appointment and resignation of a government servant shall be treated as an effective proof of the same.

The above amendments were given retrospective effect covering even the election petitions pending before the Courts including appeals before the Supreme Court.

5. *The Constitution (Thirty-eighth Amendment) Act, 1975 dated August 1, 1975.*

By the Thirty-eighth Amendment Act power to issue Ordinances by the President, the Governor and the Administrator under the relevant provisions of the Constitution was conferred, laying down that their satisfaction as to the necessity of immediate action shall be final and conclusive and shall not be questioned in any Court on any ground. The Thirty-eighth Amendment also entitled the President to issue different proclamations on different grounds and to make satisfaction of the President as to the emergency final and conclusive. During the Emergency the satisfaction and the declaration of the Emergency could not be questioned in any Court on any ground.

6. *The Constitution (Thirty-ninth Amendment) Act, 1975 dated August 10, 1975.*

This amendment *inter alia* provided for :—

- (a) the election of President and Vice-President shall not be questioned in any Court;
- (b) similarly, elections of the Prime Minister and the Speaker of the House were placed above the law Courts and were to be judged by a Body/Authority to be constituted by the Parliament.

The above mentioned amendments prevented even filing of election petitions against the named persons and even pending petitions abated.

1976 :

7. *The Maintenance of Internal Security (Amendment) Act, 1976 (No. 14 of 1976) dated January 25, 1976.*

The amendment *inter alia* provided for :—

- (a) re-detention of a person whose order has been earlier revoked;
- (b) authorising Central Government to obtain details regarding detentions from the State Governments;
- (c) making the grounds of detention as confidential and barring its disclosure to any one.

8. *The Maintenance of Internal Security (Second Amendment) Act, 1976 (No. 78 of 1976) dated August 25, 1976.*

This amendment made Section 16A applicable from June 29, 1975 with retrospective effect. By this amendment the maximum period of detention was extended from 12 to 24 months.

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9. *The Press Council (Repeal) Act, 1976 (No. 24 of 1976) dated February 2, 1976.*

The Press Council Act, 1965 was repealed from January 1, 1976 dissolving the Press Council of India and also abating of cases, suit, appeals etc., pending before Court in which Press Council was a party.

10. *The Prevention of Publication of Objectionable Matter Act, 1976 (No. 27 of 1976) dated February 2, 1976.*

This Act provided for :—

- (a) inclusion in the expression "objectionable matter" any words, signs or visible representations which are defamatory of the President of India, the Vice-President of India, the Prime Minister or the Speaker of the House of the People or the Governor of a State;
- (b) seizure of copies of the publication made in disobedience of the Central Government order prohibiting the printing or publication, closure of any printing press or other instrument or apparatus used in the publication;
- (c) power to demand security from the presses, publishers and editors of newspapers and news sheets, when it appears to the competent authority that the publication contains any objectionable matter;
- (d) power of the Central Government to declare certain publications forfeited.

11. *Parliamentary Proceedings (Protection of Publication) Repeal Act, 1976 (No. 28 of 1976) dated February 11, 1976.*

By this Act the Parliamentary proceedings (Protection of Publication) Act, 1965 was repealed and came in force from December 8, 1975.

12. *The Constitution (Forty Second Amendment) Act, 1976 dated December 18, 1976.*

The Constitution was extensively amended by 59 clauses.

1977 :

13. *The Representation of the People (Amendment) Ordinance, 1977 (No. 1 of 1977).*

The Ordinance amended the Section 8(a) of the Act substituting the words that the President shall act on the advice of the Election Commission with regard to disqualification : "shall consult the Election Commission and the Election Commission may for this purpose make such enquiries as it thinks fit".

14. *The Disputed Elections (Prime Minister and Speaker) Ordinance, 1977 (No. 4 of 1977).*

By this Ordinance a council was constituted in case of disputed elections of the Prime Minister and the Speaker as per the earlier amendment in the People's Representation Act.

15. *The Presidential and Vice-Presidential Elections (Amendment) Ordinance, 1977 (No. 3 of 1977).*

This Ordinance made similar provisions as above in case of President and Vice President.

2.6 After the declaration of Emergency a number of legislative and regulatory measures were taken with a view to impose censorship on the Press. On June 26, 1975, a Censorship Order was passed by the Central Government under Rule (1) of the Defence of India Rules, 1971. On July 5, 1975, the Central Government directed that an order made under Rule 48 of the Defence and Internal Security Rules by a State Government or by any office or authority authorised in this behalf by the State Government before July 15, 1975, should not continue on or after that date, except in accordance with such instructions as the Central Government might give to the State Government in that behalf.

2.7 On July 6, 1975, a notification was issued by the Central Government and a new sub rule was inserted in Rule 48. The Censorship Order was amended on July 6, 1975, and on July 13, 1975, confidential instructions were issued by the Chief Censor to the Censoring authorities in the States. On July 31, 1975, the Defence of India (Amendment) Act, 1975 (Act 32 of 1975) was repealed and re-enacted as the Defence of India (Amendment) Ordinance, 1975. On August 5, 1975, guidelines for the Press were issued by the Chief Censor. On August 11, 1975, a notification was issued by the Central Government further amending Rule 48 by enacting Defence and Internal Security of India (Second Amendment) Rules, 1975. On August 12, 1975, a notification was issued by the Central Government enacting the Defence and Internal Security of India (Third Amendment) Rules, 1975, whereby Rule 48 of the said Rules was further amended.

2.8 On January 8, 1976, a Presidential Order was issued under Article 359(1) of the Constitution suspending the right to move any court for the enforcement of fundamental rights conferred by Article 19 of the Constitution. On March 13, 1976, orders were issued by the Central Government amending the Central Censorship order.

2.9 The declaration of Emergency and the consequent suspension of the fundamental rights under Article 19, resulted in the suspension of the protection of Articles 14, 21 and 22 by the issue of the Presidential order in exercise of the powers under Article 359 of the Constitution and by the amendment of Article 352 making the satisfaction of the President final and conclusive and not liable to be questioned in any court on any ground and subject to the provisions of clause (2) taking away the jurisdiction of the Supreme Court or any other court to entertain any action on any ground regarding the validity of the declaration made by the proclamation of the President to the effect mentioned in clause (1) or to the continued operation of the proclamation, and restrictions imposed upon the authority of the courts to grant protection against the infringement of basic human rights enumerated in Article 19; all protection against arbitrary action was taken away for the duration of the Emergency. The right of equality under Article 14, the right of fundamental guarantee against deprivation of life and personal liberty according to procedure established by law also stood suspended and the protection against arrest and detention could not be challenged before the courts. The right of free speech and expression, right to assemble peacefully, to form associations and unions; to move freely throughout the territory of India; to reside and settle in any part of the territory of India; to acquire, hold and dispose of property and to practice any profession, or to carry on any occupation, trade or business, which were guaranteed under clause (1) of Article 19, could not thereafter be exercised.

2.10 As a sequel to this a number of restrictions were imposed upon the newspapers by the issue of Censorship Orders and the amendments thereafter from time to time. Jurisdiction of the Courts to entertain actions designed to challenge the validity of actions, legislative and executive, of the State were also circumscribed.

CHAPTER III

In the first instance the procedure followed by the Commission may be explained because certain persons and especially Smt. Indira Gandhi, former Prime Minister; and Shri Pranab Kumar Mukherjee, a former Minister of State in the Ministry of Finance, raised objections to the legality of the procedure followed by the Commission; and have on the plea of illegality of procedure declined not only not to assist the Commission but even have declined to file statements relating to their versions of the transactions which formed the subject-matter of inquiries into excesses in which they appeared to be concerned and to take oath and give evidence pursuant to notices under section 8B of the Commissions of Inquiry Act, 1952. Section 3 of the Commissions of Inquiry Act, 1952, provides—

- “(1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by the House of the People or, as the case may be, the Legislative Assembly of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly :

Provided that	*	*	*	*
(2)	*	*	*	*
(3)	*	*	*	*
(4)	*	*	*	”

Section 4 provides that the Commission shall have the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely :—

- “(a) summoning and enforcing of attendance of any person from any part of India and examining him on oath;
 (b) requiring the discovery and production of any document;
 (c) receiving evidence on affidavits;
 (d) requisitioning any public record or copy thereof from any court or office;
 (e) issuing commissions for the examination of witnesses or documents;
 (f) any other matter which may be prescribed.”

Section 5 provides for the conferment of additional powers on the Commission:

- “(1) Where the appropriate Government is of opinion that, having regard to the nature of

the inquiry to be made and other circumstances of the case, all or any of the provisions of sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) should be made applicable to a Commission, the appropriate Government may, by notification in the Official Gazette, direct that all or such of the said provisions as may be specified in the notification shall apply to that Commission and on the issue of such a notification, the said provisions shall apply accordingly.

- (2) The Commission shall have the power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.
- (3) The Commission or any officer, not below the rank of a gazetted officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any books of account or other documents relating to the subject-matter of the inquiry may be found, and may seize any such books of account or documents or take extracts or copies therefrom, subject to the provisions of section 102 and section 103 of the Code of Criminal Procedure, 1898, in so far as they may be applicable.
- (4) * * * *
- (5) * * * *

Under section 5A it is provided :

- “(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services,—
- (a) in the case of a Commission appointed by the Central Government, of any officer or investigation agency of the Central Government or any State Government * *
- (b) * * * *
- (2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under

sub-section (1) may, subject to the direction and control of the Commission,—

- (a) summons and enforce the attendance of any person and examine him;
- (b) require the discovery and production of any document; and
- (c) requisition any public record or copy thereof from any office.

(3) * * *

- (4) The officer or agency, whose services are utilised under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon (hereafter in this section referred to as the investigation report) to the Commission within such period * * *

- (5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusions, if any, arrived at in the investigation report submitted to it under sub-section (4), and for this purpose the Commission may make such inquiry (including the examination of the person or persons, who conducted or assisted in the investigation) as it thinks fit.

- (6) No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement :

Provided that the statement—

- (a) is made in reply to a question which he is required by the Commission to answer, or
- (b) is relevant to the subject-matter of the inquiry."

Section 8 provides :

"The Commission shall, subject to any rules that may be made in this behalf, have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private)."

Section 8B provides:

"If, at any stage of the inquiry, the Commission,—

- (a) considers it necessary to inquire into the conduct of any person; or
- (b) is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,

The Commission shall give to that person a reasonable opportunity of being heard in

the inquiry and to produce evidence in his defence :

Provided that * *

Section 8C provides :

"The appropriate Government, every person referred to in section 8B and, with the permission of the Commission, any other person whose evidence is recorded by the Commission,—

- (a) may cross-examine a witness other than a witness produced by it or him;
- (b) may address the Commission; and
- (c) may be represented before the Commission by a legal practitioner or, with the permission of the Commission, by any other person."

Section 11 provides :

"Where any authority (by whatever name called), other than a Commission appointed under section 3, has been or is set up under any resolution or order of the appropriate Government for the purpose of making an inquiry into any definite matter of public importance and that Government is of opinion that all or any of the provisions of this Act should be made applicable to that authority. The Government may, subject to the prohibition contained in the proviso to sub-section (1) of section 3, by notification in the Official Gazette, direct that the said provisions of this Act shall apply to that authority, and on the issue of such a notification that authority shall be deemed to be a Commission appointed under section 3 for the purposes of this Act."

By Section 12 power is conferred upon the appropriate Government to make Rules, to carry out the purposes of the Act.

3.1 Pursuant to the power conferred by section 12, the Central Government have published on July 15, 1972, the Commission of Inquiry (Central) Rules, 1972. Rule 5 sets out the procedure of inquiry :

"(1) A Commission may sit in public or in private as it thinks fit :

Provided that a Commission shall sit in private on a request being made by the Central Government in that behalf.

(2) A Commission shall, as soon as may be after its appointment—

- (a) issue a notice to every person, who in its opinion should be given an opportunity of being heard in the inquiry, to furnish to the Commission a statement relating to such matters as may be specified in the notice ;

- (b) issue a notification, to be published in such manner as it may deem fit, inviting all persons acquainted with the subject matter of the inquiry to furnish to the Commission a statement relating to such matters as may be specified in the notification.
- (3) Every statement furnished under clause (a) of sub-rule (2) shall be accompanied by an affidavit in support of the facts set out in the statement sworn by the person furnishing the statement.
- (4) Every person furnishing a statement under clause (a) of sub-rule (2) shall also furnish to the Commission along with the statement a list of the documents, if any, on which he proposes to rely and forward to the Commission, wherever practicable, the originals or true copies of such of the documents as may be in his possession or control and shall state the name and address of the person from whom the remaining documents may be obtained.
- (5) (a) A Commission shall examine all the statements furnished to it under clause (b) of sub-rule (2) and if, after such examination, the Commission considers it necessary to record evidence, it shall first record the evidence, if any, produced by the Central Government and may thereafter record evidence in such order as it may deem fit,—
 - (i) the evidence of any person, who has furnished a statement under clause (a) of sub-rule (2) and whose evidence the Commission having regard to the statement, considers relevant for the purpose of the inquiry; and
 - (ii) the evidence of any other person, whose evidence in the opinion of the Commission is relevant to the inquiry :

Provided that the Commission may dispense with the attendance of any person for the purpose of giving evidence before it if in its opinion—

- (i) such attendance cannot be enforced except by causing undue hardship or inconvenience to that person; or
- (ii) such attendance should be dispensed with for any other sufficient reason to be recorded by it in writing.

(b) If after all the evidence is recorded under clause (a) of sub-rule (5), the Central Government applies to the Commission to recall any witness already examined or to examine any new witness, the Commission, if satisfied that it is necessary for the proper determination of any relevant fact to do so, shall recall such witness or examine any such new witness.

(6) * * *

(7) The Commission shall have the powers of a civil court to make local investigation, either personally or through any person, duly authorised by it, into any matter falling within its terms of reference.

(8) A Commission shall have the power to regulate its own procedure in respect of any matter for which no provision is made in these rules."

3.2 The Commission framed certain Regulations relating to Regulations of Procedure to be followed by the Commission in exercise of the powers conferred by clause (8) of Rule 5.

3.3 By the Act the appropriate Government is authorised to set up a Commission of Inquiry for determining the facts and circumstances relating to any matter of public importance. The appropriate Government is authorized to appoint a Commission, which shall exercise the powers set out in section 4 of the Act. The Commission may be invested with additional powers under sections 5 and 6 for utilising the services of officers and investigating agencies for conduct of investigations pertaining to the Inquiry. The function of the Commission is to determine facts relating to the matters of definite public importance for the purpose of making inquiries thereto.

3.4 The proceedings of the Commission are, neither of the nature of a civil suit, where contesting parties are arrayed on opposite sides, one pleading that a civil right has been infringed and the other contesting that claim. Nor are the proceedings of the nature of a criminal proceeding, in which it is pleaded that a person or persons have committed infraction of the law and has or have on that account incurred liability for imposition of a penalty prescribed by law. In the case for trial of a suit the function of the court is to determine the civil rights and to grant appropriate relief to the person claiming to be aggrieved; if the infraction of his right is proved, the liability of the person infringing the right is established: in a criminal trial the function of the court is to determine whether the action of a person charged with the commission of an infraction of a law is established to have been committed by him and whether such an infraction is established beyond reasonable doubt. These proceedings are adversary proceedings—one party alleging existence of a certain right and the other party denying the right or the statement of the complainant alleging infraction of the law by the other party and the other party denying such infraction.

3.5 Functions of the Commission under the Act are, however, of an entirely different nature. The Commission is not concerned with the establishment of any civil rights or the infraction of those rights. The Commission is also not concerned to determine the infraction of any laws involving the imposition of any penalty upon a person charged with the commission of infraction of a law. The proceedings before the Commission are not of an adversary character. It is the

duty of the Commission appointed for that purpose to make an inquiry into the subject matter of the inquiry if the subject-matter is of definite public importance. For that purpose, the Commission is invested with certain powers, set out in section 4 and 5 of the Act.

3.6 The Commission, constituted under section 3 of the Commissions of Inquiry Act, may be called upon to hold inquiries into a variety of matters of definite public importance. The matters of public importance may relate to the conduct of a particular person, or a group of persons, or as in the present case to investigate into a definite matter/matters of public importance. The Commission may be invested with the powers to hold an inquiry into certain transactions without specifying the names of persons responsible therefor; and leaving it to the Commission to determine: (i) whether the transaction relating to a matter of public importance, referred to in the terms of reference has been committed; and (ii) to identify the person or persons primarily responsible therefor. In view of the variety of transactions or subject matters in respect of which the Commission may be appointed to inquire, the Legislature has not prescribed any definite form of procedure; and has left it to the Commission by section 8 to regulate its own procedure. This power is, however, not unguided and is subject to the Rules that may be made in that behalf by the Central Government. The Commission is, in each case, having regard to the nature of the inquiry to be made and having also regard to the nature of the definite matters of public importance, which it is called upon to inquire into, authorised to regulate its own procedure, but subject to such Rules which the Central Government may make in that behalf. Certain other restrictions are also imposed by sections 8B and 8C on the power of the Commission to regulate its own procedure. In other words, the Commission must be guided in adopting its procedure by the Rules prescribed in that behalf; and also comply with the requirements, of sections 8B and 8C of the Act.

3.7 In disposing of the objections raised by Smt. Indira Gandhi by the order of the Commission dated December 5, 1977, the Commission observed that it proposed to follow a procedure, which after considerable thought the Commission felt advised to follow in holding the inquiry in regard to the terms of reference for making inquiry: first, to determining whether an excess falling within the terms of reference was committed; and if the Commission was satisfied on a consideration of the materials placed before it that there was, *prima facie*, evidence of the commission of any excess or excesses and such other evidence which may be given before the Commission to supplement the same, by persons invited to appear before the Commission, the procedure prescribed for summoning persons, who may appear to be involved in the commission of those excesses, would be resorted to, to appear before the Commission, and explain after an appropriate notice under rule 5(2)(a) was issued and an opportunity was given to such persons under section 8B of the Act.

3.8 It was made clear that at that stage the Commission was not compelling any person to come before

the Commission. The Commission was only inviting persons who could assist the Commission in the investigation with regard to the alleged excesses; to appear before the Commission; and that if the Commission was satisfied on a perusal of the materials placed before it:

- "(i) as to the commission of an excess; and
- (ii) the *prima facie* evidence of his or her involvement in the commission of that excess,"

the inquiry would be held strictly in accordance with the terms of sections 8B and 8C of the Act.

3.9 After consideration of the evidence of witnesses, who had come to assist the Commission in regard to various transactions in the light of the investigations made by investigating staff; and the documents within its cognizance, the Commission issued notices to several other persons under rule 5(2)(a) of the Commission of Inquiry Rules, 1972, calling upon them to file their statements relating to certain matters, specified in the notices issued to them. Summonses were also issued under section 8B of the Commissions of Inquiry Act.

3.10 Smt. Indira Gandhi objected to this procedure; and declined to file a statement pursuant to the notice under rule 5(2)(a) and in the manner provided in rule 5(3) and to take oath or give evidence on oath; and raised a number of objections, which are broadly:—

- (i) that the procedure followed by the Commission is improper or illegal;
- (ii) that her refusal to file a reply or a statement, as required under rule 5(2)(a) is justified because the notice was not issued, with the least practicable delay and in any event when a notice/summons under section 8B of the Act has been issued, such a notice under rule 5(2)(a) cannot be issued; and
- (iii) that the appropriate procedure for hearing of the Commission must be analogous to the procedure in a criminal trial, that is, the person, to whom a summons is issued under section 8B is in a position of an accused person; and, therefore, cannot be subjected to cross-examination.

Objections were also raised on a number of subsidiary matters, *inter alia*,—

- (a) that the terms of reference of the Commission are vague;
- (b) that the Commission has no power to inquire into the circumstances, which preceded the declaration of Emergency and the manner in which the advice for the declaration of Emergency was given;
- (c) that the transactions, which commenced after June 25, 1975, or shortly before that may be inquired into, but no transaction, which commenced at a point of time appreciably longer than a few days prior to June 25th, 1975, can be inquired into;

- (d) that no opportunity to note the demeanour of the witness, who had already been examined by the Commission was given to persons to whom summonses under section 8B were issued and, therefore, the proceedings would be regarded as vitiated ; and
- (e) that since under the Commissions of Inquiry Act that failure to tell the truth before the investigating officer or making a statement inconsistent with a statement made before the investigating officer is liable to be made the subject matter of a prosecution for perjury, the investigating officers must be examined by the Commission or be brought before the Commission, so that the person to whom a summons is issued under section 8B is entitled to cross-examine those investigating officers.

3.10A In dealing with these objections the Commission observed that the proceedings before the Commission are taken under the terms of reference for determining the truth in respect of certain transactions or certain matters, set out in the terms of reference. The proceedings, therefore, cannot assume the form of a proceeding of a civil trial nor of a criminal trial, where some person is accused of the commission of an offence. It was also observed :

It is necessary to emphasise this fact because the argument persistently advanced before me by Counsel for Smt. Gandhi was that the proceedings before the Commission must be, if not actually assimilated, made similar to a proceeding relating to a criminal trial ; and in support of that contention, the argument was primarily based upon the terms of section 8B of the Act. It may be pointed out that the proceedings before a Commission of Inquiry disclose characteristics substantially different from a trial of a suit or a criminal prosecution. From the very nature of the proceedings, it will not be an adversary proceedings, i.e. where there is either a plaintiff or defendant or a prosecutor and an accused person, but the proceedings will be of the nature of 'inquisitorial'. When I say 'inquisitorial', it must be shorn of all the sinister aura the expression 'inquisitorial' has acquired because of association in certain foreign countries where inquisitions were held under circumstances as a part of religious persecution. (When I say 'inquisitorial', it means that the presiding officer takes upon himself the duty to ascertain the facts through witnesses after giving opportunity to persons concerned, who may be affected by the determination of facts.) Whether the inquisitorial method is better in an academic sense, than the adversary method is not a matter with which I am concerned. The Act has adopted the inquisitorial method. On that I can do no better than cite what Lord Justice Salmon said in his report on the Royal Commission on Tribunals of Inquiry, 1966 :

- "27. The exceptional inquisitorial powers conferred upon a Tribunal of Inquiry under the Act of 1921 necessarily exposes the ordinary citizen to the risk of having aspects of his private life, uncovered which should other-

wise remain private and to the risk of having baseless allegations made against him. This may cause distress and injury to reputation. For these reasons, we are strongly of the opinion that the inquisitorial machinery set up under the Act of 1921 should never be used for matters of local or minor public importance, but always be confined to matters of vital public importance concerning which there is something in the nature of nationwide crisis of confidence. In such cases, we considered that no other method of investigation would be adequate."

- "28. Normally persons cannot be brought before a Tribunal and questioned save in civil or criminal proceedings. Such proceedings are hedged around by long-standing and effective safeguards to protect the individual. The inquisitorial procedure is alien to the concept of justice generally accepted in the United Kingdom. There are, however, exceptional cases in which such procedure must be used to preserve the purity and integrity of our public life, without which a successful democracy is impossible. It is essential that on the very rare occasions when crises of public confidence occur evil if it exists shall be exposed so that it may be rooted out or if it does not exist, the public shall be satisfied that in reality there is no substance in the prevalent rumours and suspicions by which they have been disturbed. We are satisfied that this would be difficult, if not impossible, without public investigation by an inquisitorial Tribunal possessing the powers conferred by the Act of 1921. Such a Tribunal is appointed by Parliament to enquire and report."

- "30. There are important distinctions between inquisitorial procedure and the procedure in an ordinary civil or criminal case. It is inherent in the inquisitorial procedure that there is no lis. The tribunal directs the enquiry and the witnesses are necessarily the tribunal's witnesses. There is no plaintiff or defendant, no prosecutor or accused; there are no pleadings defining issues to be tried, no charges, indictments or depositions. The inquiry may take a fresh turn at any moment. It is, therefore, difficult for persons involved to know in advance of the hearing what allegations may be made against them."

3.11 After setting out the terms of reference, it was observed that the Commission had the power under section 8 of the Commissions of Inquiry Act and was obliged to devise a procedure, which would be fair to every one concerned and within which the Commission would effectively perform the duties entrusted to it to hold the inquiry. For that purpose, it was considered necessary to have investigation made by the investigating staff of the Commission. In the very nature of things, such investigation could not be complete. It was, therefore, thought necessary to ask persons

cognisant of the transactions to appear before the Commission to assist the Commission in making the inquiry. It was then made clear that there was no compulsion upon anyone to come before the Commission. It was only a request to assist the Commission in the due performance of its duties.

3.12 After setting out the terms of rule 5, it was observed that it was obligatory upon the Commission to issue a notice, both under clause 2(a) of rule 5 and notification under clause 2(b). A notification was issued generally inviting the public to make complaints under clause 2(b). But rule 5(2)(a) could not be complied with at that stage because under the terms of reference, the Commission could not without adding a preliminary inquiry ascertain the persons, who may be given an opportunity of being heard in the inquiry under rule 5(2)(a). The Commission was called upon to make an inquiry into certain matters, but without indicating the involvement of any named persons. It was, therefore, necessary for the Commission to identify the persons to whom notice must be given. It was also necessary in order to maintain some regulation and control over the proceedings, before the Commission was, *prima facie*, satisfied, whether there had or had not been committed an excess, following the terms of reference. For that purpose letters of request were sent to various persons to come before the Commission, whose names appeared to have been disclosed on the investigations made by the officers. After holding this inquiry and perusing the statements made before the investigating staff, it was thought necessary, when it appeared that the Commission could form an opinion that certain persons should be given an opportunity of being heard in the inquiry, and notices under rule 5(2)(a) were given. The Commission was also satisfied that if inquiry is held, which it was directed to make in regard to the five items, the holding of the inquiry may affect the reputation of certain persons, or that it would be necessary to investigate into the conduct of those or certain other persons. The Commission, accordingly, directed that summonses be issued under section 8B of the Act. Thereupon, notices under rule 5(2)(a) and summonses under section 8B were issued by the Commission. Pursuant to these notices under rule 5(2)(a) some persons filed their statements, while others did not.

3.13 Referring to the contentions that notice under rule 5(2)(a) was not issued "as soon as may be" after the appointment of the Commission, the Commission observed that an earlier stage for issuing the notice against any person, who in the opinion of the Commission, should be given an opportunity of being heard in the inquiry, could not be conceived of unless that person was identified. It was for that reason that the preliminary inquiry was held to identify the person, who, in the opinion of the Commission, should be given an opportunity of being heard. The Commission gave them opportunity to furnish statements relating to such matters by issuing notices under rule 5(2)(a). The Commission pointed out that rule 5(2)(a) makes it obligatory for the Commission to issue the notice to every person, who, in the opinion of the Commission, should be given an opportunity of being heard in the inquiry to furnish to the Commission a statement relating to such matters, as may be specified in the notice.

The Commission has no power to dispense with the issue of the notice and the submission of the counsel to dispense with the notice could not be acceded to. The notices, in fact, had been issued, requiring the persons to whom they were issued, to file their version and statement of facts in support of the version set out in their statements. They were also required to file lists of documents on which those persons relied and to forward to the Commission those documents. This was the stage at which the person, who in the opinion of the Commission was required to furnish a statement relating to the matters specified in the notice, was identified. At no earlier stage could such notice be given. Under the provisions of the Act, the next stage of holding an inquiry on the statements filed before the Commission commences thereafter. At the earlier stage, witnesses would be examined—all would be witnesses for the Commission. If, however, it appeared to the Commission that it was necessary to inquire into the conduct of any person, or in the opinion of the Commission the reputation of any person was likely to be prejudicially affected by the inquiry, the Act made it obligatory that summons under section 8B shall be issued.

3.14 Therefore, the Commission observed that there was no warrant for the view that once a notice under section 8B is issued, there is no obligation on the part of the Commission to issue a notice under rule 5(2)(a), nor that the issuance of the notice under 5(2)(a) is dispensed with, when a summons under section 8B is issued. It was observed :

"Rule 5(2)(a) and section 8 operate in different fields. Rule 5(2)(a) deals with a demand from the Commission, in what may be loosely called "pleading of the person to whom the notice is issued". Persons who, in the opinion of the Commission, should be called upon to have on that account an opportunity of explaining certain matters, which have come to the notice of the Commission at that stage. The person to whom a notice has been issued, is required to come and submit his statement in regard to what his version of the matters specified in the notice is. It is after the statement is filed, the inquiry commences and it is in the course of the inquiry that the notice under section 8B will, if at all, be issued. In order, however, that time may not be wasted,

* * * *

it was found necessary by me to issue a notice under rule 5(2)(a) and also because it appeared to me (Commission) from materials disclosed in the evidence at the stage of the inquiry collected by the investigating officers and, further, on the preliminary inquiry held by me (Commission) that it will be necessary to inquire into the conduct of certain persons and also that the reputation

of certain persons was likely to be prejudicially affected by the inquiry. On that account this summons under section 8B was issued."

3.15 The Commission rejected the contention of the counsel for Smt. Indira Gandhi that once a summons under section 8B is issued by the Commission, there can be no scope for issuing a notice under rule 5(2)(a), or that the proceedings before the Commission are either of the nature of a criminal inquiry or quasi criminal inquiry or that the inquiry is in the nature of a criminal proceedings.

3.16 It was also emphasised that the proceedings before the Commission are for determining the truth in the manner provided by the Act in respect of matters of public interest specified in the terms of reference. They are not civil proceedings, nor are they criminal proceedings. They are not adversary proceedings. They are proceedings in which truth has to be determined by the adoption of a procedure to be devised by the Commission having regard to the nature of the inquiry and which is essentially inquisitorial in character, as prescribed by the Act.

3.17 The Commission also rejected the contention raised by the counsel that it was obligatory upon the Commission to issue a notice under rule 5(2)(a) as soon as it appeared from any statement made before the investigating officer that some persons were concerned in the commission of any excess specified in the terms of reference and if the notice was not issued soon thereafter, such a notice could not be issued at all.

3.18 The Commission also rejected the contention urged in the alternative that the appropriate procedure should have been that as soon as a witness appeared before the Commission at the stage of the preliminary hearing and made some statement which involved a person in the commission of some impropriety, the Commission was bound to issue a summons under section 8B and that the Commission had no option to act otherwise. It was observed that on the terms of section 8B if the Commission at any stage of the inquiry either deems it necessary to inquire into the conduct of any person or the Commission is of opinion that reputation of any person is likely to be prejudicially affected by the inquiry, notice under that section must be issued. But until the Commission entertains, on materials placed before it, an opinion after consideration of the materials, there can be no scope for issuing summons under section 8B. Section 8B requires that the Commission must consider it necessary to inquire into the conduct of any person; and merely because some statement is made before the Commission involving directly or indirectly any person in the commission of an excess, without examining whether the statement in the light of the rest of the evidence and circumstances is reliable, or whether such a statement can be acted upon, it would be impossible and, in any event, improper for the Commission to issue a summons under section 8B, merely because some statement was made by some one attributing impropriety to another person.

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3.19 The contention raised by the counsel that the person to whom a notice under rule 5(2)(a) or a summons under section 8B is issued, cannot be called upon to disclose his version of the incidents, which form the subject matter of inquiry, because when a serious allegation is made, which affects the reputation of a person, the proceeding from that statement assumes the form of a criminal trial or a proceeding similar to or analogous to a criminal trial and that the difference between the proceedings under section 8B and a criminal proceeding would be minimal, was also rejected.

3.20 Referring to the contention urged by the counsel that the person to whom a notice is issued under rule 5(2)(a) cannot be called upon to disclose his version of the incidents referred to in the notice, because that would amount to "pre-empting the defence" of that person, it was pointed out that the contention is based upon a misconception of the true nature of the proceedings and the express provisions made in the Rules, which are part of the Act. Under rule 5(2)(a) the Commission is under a statutory obligation to call upon persons, who in the opinion of the Commission should be given an opportunity of being heard, to furnish to the Commission a statement relating to such matters as may be specified in the notice; and obviously it could not mean that even though a person is given an opportunity of being heard in an inquiry, he should not be called upon to furnish to the Commission a statement relating to the matters as may be specified in the notice. Under the Act opportunity must be given in those cases in which there is something to be investigated into or inquired into a finding on which might be prejudicial to the conduct of the person to whom notice has been issued.

3.21 The Commission pointed out that rule 5(3) expressly provides that the disclosure shall be made on affidavit in support of the facts stated in the statement sworn by the person furnishing the same.

3.22 It was contended that by calling upon a person to file a statement under rule 5(2)(a) disclosing his version as regards certain incidents, there is pre-empting of the defence because that person is called upon to make a statement in an inquiry before the Commission: it was emphasised that the Commission has to ascertain the facts and in ascertaining those facts assistance of persons, who should be given opportunity of being heard is asked for, and the persons, who are given opportunity should make statements on oath and also produce documentary evidence on which they rely; accordingly, therefore the contention was rejected.

3.23 The Commission also rejected the contention raised by counsel for Smt. Gandhi that a person to whom a summons is issued under section 8B cannot be cross-examined, since section 8C contemplates cross-examination of witnesses only and a person who deposes to the involvement of the person against whom an inquiry is being made and not of a person against whom or in whose conduct an inquiry is being made.

This argument was sought to be supported on three grounds :

- (i) under rule 5(2)(a) every person notwithstanding the amplitude of the expression used therein still excluded persons against whom some allegation of impropriety was made ;
- (ii) the terms of section 8B, referred to a defence to be made by a person whose conduct was being inquired into or the reputation of that person was likely to be prejudicially affected ; and
- (iii) in terms of section 8C the right of cross-examination is conferred upon certain persons and by implication it means that the person whose conduct is being inquired into, is not a person who can be cross-examined.

3.24 The Commission rejected these contentions and observed that section 8B confers the basic protection to any person that he shall not be condemned unheard by the Commission, *i.e.* his conduct should not be adversely commented upon by reaching a finding that his version is not true, without giving him an opportunity of being heard. The finding may be of impropriety or of an act which may amount to an offence or anything which might bring him into disrepute. If the Commission thinks it necessary to inquire into the conduct of such a person, it is necessary to give a notice under section 8B and that such a person would obviously be a person against whom there is an allegation made by someone. Similarly, it would be necessary to issue a summons to the person, who in the opinion of the Commission is likely to be prejudicially affected by the holding of the inquiry. It was pointed out that section 8C defines the contours of a reasonable opportunity of being heard in the course of the inquiry. Reasonable opportunity of being heard is not merely of making an oral representation or denying what is alleged but including right to appear by counsel, and to cross-examine witnesses who depose against him and to lead evidence to rebut that evidence and to address the Commission. That, however, does not mean that when the Commission is holding an inquiry into the conduct of any person, such a person is immune from cross-examination. The procedure, which the counsel suggested should be followed is that once a summons is issued under section 8B, there is no scope for the issue of notice under rule 5(2)(a) ; and all the witnesses on behalf of the person who have either made a complaint or whether there was no complaint, where a reference has been made on behalf of the Commission should be examined, should be allowed to be cross-examined by the person whose conduct is under investigation and thereafter such a person may be examined by the Commission but not by counsel appearing for other persons, or even by counsel for the Union or by counsel for the Commission.

3.25 It was observed that there is nothing either in the Rules nor in the Act, which supports the contention. There is not even an indication that such a procedure is intended to be followed, unless it is assumed that when conduct is attributed to a person

which may ultimately result in some action to be taken for impropriety, if the finding of the Commission is accepted, the proceedings before the Commission itself assume the form of a criminal trial. For such an assumption, there is no warrant.

3.26 It was pointed out that the procedure has to be devised by the Commission in each case having regard to the nature of the inquiry to be made; and rarely there would be any two Commissions, which would follow the same procedure. There may be a case, where no person may be involved directly or indirectly; but only certain matters are to be investigated by the Commission. There may be cases in which no person may be named as responsible for any impropriety and such persons may have to be identified and their involvement in the impropriety determined; there may be other cases in which the person alleged to be responsible for improper conduct may be named. In each such case the procedure would be different and the Commission has to devise a procedure, subject to the Rules and affording protection or safeguards provided by the statute to the persons against whom inquiry may have to be made. It was also observed that section 8C has no independent existence : it merely gives content to the right of being heard, as given by section 8B. Section 8C is not intended to restrict the scope of the inquiry which has to be made by the Commission or to attribute to the inquiry a form different from the normal form of an inquisitorial proceeding.

3.27 The Commission is obliged to devise a procedure under section 8 of the Act having regard to the nature of the inquiry to be made. The procedure, however, has to be subject to the Rules, which may be made by the Commission in that behalf. The Commission is entitled, however, to regulate its procedure subject to the basic safeguards provided in sections 8B and 8C. The Commission has also to issue, as soon as may be, a notice to every person, who, in the opinion of the Commission should be given an opportunity of being heard in the inquiry to furnish to the Commission a statement relating to such matters as may be specified in the notice and that such person should be required to submit such a statement under clause (3) of rule 5 by an affidavit in support of the facts set out in the statement sworn by the person furnishing the statement. Apart from that the Commission has the additional power of calling upon any person to furnish information on such points or matters as, in the opinion of the Commission, may be useful for or relevant to the subject matter of the inquiry and the person, so required, is legally bound to furnish such information.

3.28 The proceedings of the Commission are not analogous to proceedings in a civil trial or enforcement of a civil right or obtaining relief for infringement of a civil right, nor of a criminal trial in which the conduct of a person or persons for the commission or infraction of the law is sought to be investigated. The function of the Commission is to determine facts relating to matters of public importance and by adoption of a procedure, which is not adversary in character, but inquisitorial in character.

3.29 Under section 5 of the Commissions of Inquiry Act, the Commission may be invested with additional powers which are set out in that section. By section 5(2) the Commission has the power to require any person subject to any privilege, which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters, as in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person, so required, shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.

3.30 One objection, which was strenuously urged before the Commission by counsel appearing for Smt. Indira Gandhi in the proceedings before the Commission was that in view of the oath of secrecy taken by a Minister entering upon his office under clause (4) of Article 75, according to the forms set out in the III Schedule to the Constitution and on that account Smt. Gandhi was unable to disclose any information relating to the matters of the State which she dealt with in the course of her functioning as the Prime Minister of India till she relegated that office. Article 75, clause (1), provides that the Prime Minister shall be appointed by the President and the other Ministers also shall be appointed by the President on the advice of the Prime Minister. Clause (4) provides that before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy, according to the forms set out for the purpose in the Third Schedule. The forms of oath of office, as set out in the Third Schedule are as follows :—

"I, A. B. C., do swear * * *

that I will bear true faith and allegiance to the Constitution of India, as by law established, that I will uphold the sovereignty and integrity of India, that I will

faithfully and conscientiously discharge my duties as a Minister for the Union and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will."

The form of oath of secrecy for a Minister for the Union is as follows :—

"I, A.,....., do swear * * *

that I will not directly or indirectly communicate or reveal to any person or persons any matter, which shall be brought under my consideration or shall become known to me as a Minister for the Union except as may be required for the due discharge of my duties as such Minister."

3.31 The Commission had ruled that the oath of secrecy of office taken by a Minister of the Union does not prohibit a Minister from disclosing the information before a Commission of Inquiry especially when the Central Government has directed the holding of an Inquiry for the purpose of ascertaining facts relating to matters of public interest. The Constitution requires that the Minister shall take an oath of office but does not provide for any penalty for breach of such oath. Again, the obligation is not absolute but is subject to the communication being made or the information being revealed, as may be required in the due discharge of the duties as such Minister. In the view of the Commission, the disclosure of information before a Commission of Inquiry held in pursuance to a direction of the Central Government after a person has ceased to be a Minister, does not amount to a breach of the oath of secrecy of the Minister concerned.

CHAPTER IV

4.1 The terms of reference to the Commission are divided into five heads : The Commission is directed to inquire into the facts and circumstances relating to specific instances consisting of—

- (i) subversion of lawful processes and well-established conventions, administrative procedures and practices, abuse of authority, misuse of power, excesses and/or malpractices committed during the period when the Proclamation of Emergency made on June 25, 1975 under Article 352 of the Constitution was in force or in days immediately preceding the said Proclamation;
- (ii) misuse of power of arrests or issue of detention orders where such arrests or orders are alleged to have been made on considerations not germane to the purposes of the relevant Acts during the aforesaid period;
- (iii) specific instances of maltreatment of and/or atrocities on persons arrested under DISIR or detained and their relatives and close associates during the aforesaid period;
- (iv) specific instances of compulsion and use of force in the implementation of the family planning programme during the aforesaid period;
- (v) indiscriminate, high-handed or unauthorised demolition of houses, huts, shops, buildings, structures and destruction of property in the name of slum clearance or enforcement of Town Planning or land use schemes, during the aforesaid period.

* * * * *

4.2 The inquiry is directed into specific instances of excesses or malpractices committed during the aforesaid period. The inquiry is further directed to excesses of powers of arrests or issue of detention orders;

maltreatment of and/or atrocities on persons arrested under the Preventive Detention procedures; use of force in the implementation of the Family Planning Programme and indiscriminate, high-handed or unauthorised demolition of houses, shops and structures.

4.3 If the primary activity disclosed in a particular case falls under a particular head, it will be dealt with under that head regardless of the fact that the case discloses some other activities like subversion of lawful process or conventions, disregard of administrative procedures or abuse of authority. For example, where the excess committed relates to the issue of a detention order, despite the fact that the excess may have been committed by ignoring the established conventions and by abuse of authority, the case will be dealt with under the head "misuse of powers of arrests or issue of detention orders". Similarly, where the specific excess committed relates to the use of force in the implementation of the family planning programme, even if it appears that it was by "abuse of authority" or "misuse of power", it will be dealt with under the head "Compulsion and use of force in the implementation of the family planning programme". Similarly, where there has been indiscriminate, high-handed or unauthorised demolition of houses and structures by the abuse of authority or misuse of power, it will be dealt with under the head "Unauthorised demolition of houses, huts, etc."

4.4 Out of a number of cases which came to its notice by virtue of the complaints made to it or on the basis of the information developed by the Commission, the Commission took up for open hearing only those cases in which it appeared that there had been a blatant abuse of authority or misuse of powers relating to instances falling under one of the five heads of the terms of reference. In this regard one general principle which has been kept in mind is that the excess complained of must be of a nature which would be capable of creating a crisis of confidence or which is one of national importance.

CHAPTER V

In the Elections held to the Lok Sabha in 1971 from the Rai Bareilly Constituency Smt. Indira Gandhi was declared elected, defeating Shri Raj Narain and others who had contested the election. Shri Raj Narain then filed a petition in the High Court of Allahabad challenging the election of Smt. Indira Nehru Gandhi on a number of grounds, *inter alia*, alleging misconduct against her. The High Court of Allahabad pronounced its judgment on June 12, 1975. Shri J. M. L. Sinha of Allahabad High Court ordered :

"In view of my findings.....this petition is allowed and the election of Smt. Indira Nehru Gandhi respondent No. 1 to the Lok Sabha is declared void."

The Court further ruled that :

"The respondent No. 1, accordingly, stands disqualified for a period of six years from the date of this order, as provided in section 8A of the Representation of the People Act."

The Court further directed :

"The operation of the said order is accordingly stayed for a period of twenty days. On the expiry of the said period of 20 days or as soon as an appeal is filed in the Supreme Court, whichever takes place earlier, this order shall cease to carry effect."

5.2 Following the judgment of the Allahabad High Court setting aside the election of Smt. Indira Gandhi there was a spurt of political activity in Delhi in particular and in the rest of India in general.

5.3 Apparently, an effort was made by the followers of Smt. Indira Gandhi to create an atmosphere that she should, notwithstanding that she was unseated and disqualified to stand for election, continue to remain and function as Prime Minister of India regardless of the High Court verdict. With that object in view, a number of demonstrations, rallies and meetings were arranged by her supporters in Delhi and elsewhere.

5.4 The post-judgment scene in Delhi and some of the adjoining States was spoken to by a number of witnesses. Shri Bhawani Mal, the then Inspector General of Police, Delhi, stated that there was no denying the fact that there had been a spurt of activity in the wake of the announcement of Shri Justice Sinha's verdict. Several demonstrations, rallies and public meetings were organised between June 12 and 25. Most of these were in favour of the former Prime Minister, while a few were directed against her, and all this generated tension but no untoward incident occurred during that period.

5.5 Shri Krishan Chand, the then Lt. Governor, Delhi, stated that soon after the pronouncement of Allahabad High Court judgment, he was called to the Prime Minister's House, but he sent Shri Navin Chawla, his Secretary, to proceed to the Prime Minister's House. He stated that he learnt from Shri Navin Chawla that in order to cope up with the law and order situation that might develop from the threatened opposition rallies, it was decided to organise rallies in support of the Prime Minister; and for this purpose people had to be collected from various places. Shri Krishan Chand also stated that he was told that public utility services would also be mobilised for the purpose. These services included New Delhi Municipal Committee, Delhi Transport Corporation and Delhi Electric Supply Undertaking. He further stated that rallies and bringing of people to the House of the Prime Minister continued after the 12th of June in order to show support to the Prime Minister.

5.6 The records of Delhi Transport Corporation show that 1761 DTC buses were requisitioned by the All India Congress Committee or the Delhi Pradesh Congress Committee for organising the rallies in support of Smt. Indira Gandhi between June 12, 1975 and June 25, 1975. Shri J. R. Anand, who was working as a Traffic Manager in Delhi Transport Corporation (DTC) stated that buses were mostly booked on his own orders as the Traffic Manager and that he did it in pursuance of the decision taken by the Chairman of the DTC, who was also the Lt. Governor. The instructions were given in a meeting held at Raj Nivas that full cooperation should be given by the DTC by arranging buses to carry people who were taking part in rallies to be organised to express solidarity to the then Prime Minister. Shri J. R. Anand has stated that according to the DTC Rules for special hire by a private party, an application in prescribed proforma accompanied by advance payment is required; but this formality was not observed in the case of the bookings made by the AICC. The buses were booked on the basis of telephonic instructions received from Shri Navin Chawla, the then Secretary to the Lt. Governor. In the cases of major bookings, the details regarding the number of buses and the parties and places to which they would report, were given by Shri Navin Chawla. In small bookings, Shri J. R. Anand stated that Shri Navin Chawla told him to get in touch with certain Congress leaders for details. Shri Anand further stated that in the case of heavy number of buses booked on June 12 and 20, the buses had to be withdrawn from the scheduled operations, thus affecting the normal services; that the number of buses booked during the period June 12 to 25, 1975, on special hire, was much above the normal booking allowed for private parties, which is five buses per depot; that the total number of buses which could be booked was 95 a day which was far

exceeded in the cases of the buses booked by the AICC and the individual Congress leaders. This adversely affected the normal operations of the DTC and caused much inconvenience to the public. Shri J. R. Anand has also stated that an amount of Rs. 4 lakhs on account of special hire charges of the buses is still outstanding against the AICC and DPCC for over two years.

5.7 On June 13, 1975 the entire fleet of 983 buses plying on the Delhi routes was taken off the road and the buses were diverted to converge on the Prime Minister's House, No. 1, Safdarjung Road to register their support in favour of Smt. Indira Gandhi. Residents of Haryana, Punjab, Rajasthan and Uttar Pradesh, which are the States adjacent to Delhi, were sent in vehicles commandeered by the State authorities for the purpose. A large majority of those vehicles did not observe the Route Permits Rules required under the Motor Vehicles Act; and in many cases Government vehicles were used for which no payment was made.

5.8 The records of the DTC clearly support the evidence of the witnesses that Government employees were pressed into service for organising these rallies. A number of buses deputed in connection with these rallies were required to report to the Government servants including some senior officers. The statement of Shri Jaswant Singh, Depot Manager, DTC, gave the names/designations of such officials, numbers of buses which were deputed to report to them and the relevant dates, which are given below :—

Name of the Officer and designation	Date of report	No. of buses reported
S.H.O. Police Station, Faridabad	12-6-75	26
Smt. Meenaxi Dutta, SDM.	12-6-75	2
S.P. New Delhi, Parliament Street Police Station, Shri K.D. Nayar.	12-6-75 16-6-75 26-6-75	2 2 4
S.H.O. Police Station, Gurgaon	12-6-75	99
S.H.O. Police Station, Rai	12-6-75	95
Shri Bakshish Singh Gill, Dy. S.P., Enforcement	12-6-75	16
Director of Transport	12-6-75	34
Shri B. L. Anand, S.D.M.	12-6-75	1
Shri Sareen, Sadar Bazar Police Station	12-6-75	1
Shri Sareen, Dy. Director, Delhi Admn., Delhi	17-6-75	2
Shri Hayalan, PA to Chief Secretary, U.P.	19-6-75	60
PA to Chief Minister, Bihar	20-6-75	40

5.9 Rallies were held at New Delhi to register support for Smt. Indira Gandhi to continue in office as Prime Minister notwithstanding the order of the Allahabad High Court. Government organisations like Delhi Transport Corporation, New Delhi Municipal Committee and Delhi Electric Supply Undertaking

participated in these rallies. Shri K. D. Nayar, the then Superintendent of Police, New Delhi, has stated that he used to visit and supervise law and order arrangements in the vicinity of the Prime Minister's House. According to him the participants in these rallies carried the banners indicating their organisations and the Unions to which they belonged; and that the participants of those rallies used transport belonging to their organisations for the purpose of participating in these rallies.

5.10 The statements of Shri B. K. Mital, Assistant Secretary (Education) NDMC; Shri S. P. Goel, Assistant Engineer I, NDMC; Shri Devi Singh, Painter, NDMC; Shri Krishan Lal Chaudhary of the Horticulture Department; Shri V. K. Kaushik, A.E.III(E); Shri Chandan Bedhab, President, Workers Union; Shri Mohan Singh, Junior Engineer and Shri J. C. Wadhwa, Senior Clerk, all NDMC employees and S/Shri Dhan Ram, President of the Employees Union; Madan Lal, Senior Vice President, Employees Union and Dalip Singh, Party Leader, all of Delhi Milk Scheme have also supported the participation of these organisations' employees and resources in the pro-Prime Minister rallies.

5.11 The participation in the rallies was not confined to Delhi alone. Shri Krishan Chand, Lt. Governor deposed that

".....some neighbouring States like Haryana, Rajasthan, Western U.P. also sent contingents for the purpose. All these arrangements were made under instructions from the P.M.'s House conveyed through Mr. Dhawan and the P.M. was kept informed about the developments from time to time."

5.12 The records of DTC also clearly show that a number of buses were deputed to make trips outside the Union Territory of Delhi. Under the Motor Vehicles Rules, the buses going outside the Union Territory of Delhi are required to be issued special permits from the State Transport Authority for this purpose. (See Rule 9). The Secretary, State Transport Authority, has, however, informed the Commission by his letter dated November 28, 1977, that

".....as per records maintained in this office no contract carriage permits were issued to the DTC for carrying contract parties outside the Union Territory of Delhi or to any private parties for use of the DTC vehicles outside the Union Territory of Delhi during the period from 12th June, 1975 to 25th June, 1975."

According to Shri J. R. Anand, the then Traffic Manager, a number of buses booked by AICC through the Secretary to L. G. during this period were also sent outside the territory of Delhi, and that under the Motor Vehicles Act route permits had to be obtained for sending vehicles outside the Union Territory of Delhi, which was not done in this case; and that at a high level meeting at Raj Niwas, it was decided that the buses should be sent to the neighbouring districts of Haryana and U.P. and the instructions to allow the buses to pass the barriers had been given; that to ensure that the buses reached their destinations in the

neighbouring States, the officers of the DTC were also deployed to accompany the buses; and that he had also been assured by Shri Navin Chawla that the police authorities and the State Transport authorities had been properly briefed and instructed to ensure that the buses crossed the borders without any route permits.

5.13 Shri Raj Roop Singh, Inspector, SHO New Industrial Township, Faridabad, has stated that after the announcement of the Allahabad High Court judgment, he received a telephonic message from the police Headquarters, Gurgaon, that as informed by the Deputy Commissioner, Gurgaon, about 100 DTC buses would be arriving from Delhi for the purpose of rallies in favour of Smt. Indira Gandhi; that he was told, that the buses would report to the police station and that on demand from the Labour Inspectors, Officers of Industries Department and other Government Agencies, Shri Raj Roop Singh should permit them to take the buses with them; that the police station started receiving telephonic messages from various places and the buses were directed to report to the officers concerned; that the majority of the buses were taken by the officers of the Labour Department and Industries Department and people from the factories located in Faridabad were carried to Delhi on those buses; that no records were maintained with regard to the number of buses received or despatched; that the police was asked to arrange supply of trucks or other conveyance, e.g. four wheelers, for carrying the people to Delhi; that the police used to ask the Truck Unions and Transport companies to supply the required number of vehicles; that this was done under the direction of the District Magistrate and the trucks were collected in SDM's court at Ballabgarh, where the Block Development Officers (BDOs) or Tehsildars used to take charge of the vehicles; and that the Patwaris and Gramsewaks were detailed to take trucks to the villages and to collect the people from there to carry them to Delhi.

5.14 Sub-Inspector Khan Chand, SHO Sadar Police Station, Gurgaon, stated that the SSP Gurgaon and the senior Civil Officers had also arrived on the scene and under the directions of senior officers some buses were sent to the city while others were sent to various factories for carrying people to Delhi. Sub-Inspector Jagdish Lal, SHO Police Station City, Gurgaon, has stated that :—

".....The empty trucks passing the road were also sometime detained and asked to report at the Tehsil Headquarters for the purpose.BDOs and Tehsildars used to take charge of these vehicles and detailed the Patwaris, Gramsewaks etc. for taking these vehicles to villages and bringing people from there for taking them to Delhi."

5.15 Shri N. K. Garg, District Magistrate, Rohtak has stated that on June 12, 1975, Shri Bansi Lal, Chief Minister, Haryana, rang him from Haryana Bhawan, New Delhi, round about 10.30 a.m. and informed him that the Prime Minister had been unseated in the Allahabad High Court judgment, and

desired that truck loads of people, as many as possible be sent from 2.30 p.m. onwards to the P.M.'s House; and that in that connection Shri Garg should contact the local MLA, Lala Shri Kishan Das who would muster the Congress workers and that Bansi Lal had also directed that the persons should raise slogans; that pursuant thereto he immediately got in touch with Shri Krishan Das and conveyed the whole message to him and called Shri S. H. Mohan, SSP and asked him that he should make an effort to get as many trucks as possible for taking these people to Delhi. He also stated that he had received a similar message from Ch. Dalbir Singh, the then Deputy Minister for Shipping in the Central Cabinet.

5.16 The statement of Shri Garg is supported by the statement of Shri S. H. Mohan. Shri M. K. Miglani, who was then holding the office of the District Magistrate, has also confirmed in his statement the instructions given by Shri Bansi Lal, the then Chief Minister, Haryana. According to Shri Miglani, he learnt from the local leaders that out of 100 DTC buses that had come to Faridabad factory area only about 40 buses load could be sent, whereas the remaining buses had to return empty because they were unable to muster enough factory workers for this purpose.

5.17 On June 13, 1975 and again on June 18, 1975, about 800 to 900 employees of DESU participated in pro-P.M. rallies outside the residence of Smt. Indira Gandhi at the call of the Delhi State Electricity Workers Union. This is supported by Shri S. N. Srivastava, Chief Labour Welfare Officer, DESU and Shri K. P. Saxena, Controller Rajghat Power House.

5.18 Another major rally took place on June 20, 1975, where as many as 497 DTC buses had been requisitioned by the organisers of the rally as against the permissible number of 95 buses, which could have been booked on special hire by private parties on one single day. Efforts were also made in the State of Haryana to contribute to the rally and this is seen from the statements of S/Shri N. K. Garg, District Magistrate, Rohtak; S. H. Mohan, SSP Rohtak and M. K. Miglani, District Magistrate Gurgaon. According to Shri N. K. Garg, District Magistrate, Shri Bansi Lal had told him that this was a prestigious rally and a personal and crucial affair. So, the District Administration should not lag behind in this task.

5.19 The state of affairs in this regard was not different in the State of Punjab. The Chief Secretary, Shri R. S. Talwar, has stated that :

"When it came to my knowledge that official machinery was being utilised for organising transport and mustering men and money for the purpose, I advised the then Chief Minister not to let Government and semi-Government agencies and their personnel being used in support of a political struggle with which they as such were not concerned. This advice was not liked, nor did it have much effect and official machinery continued to be utilised for mobilising men, money and transport to be sent to Delhi."

5.20 According to the records of the Northern Railway, three special trains were arranged—one each from Varanasi, Lucknow and Kanpur on June 19, 1975, which arrived in New Delhi/Delhi on June 20, 1975. Two of these special trains had been booked by known Congressmen. The identity of the party requisitioning the special ex-Varanasi special train was not available on the file but the special train was arranged for the Congress delegates. For return journey two special trains were sent on June 21, 1975.

5.21 From the State of Rajasthan also, according to the Rajasthan State Electricity Board records, 58 trucks belonging to the State Electricity Board were ordered by the Chief Minister to be placed at the disposal of the Workers' Union. Even though the Chairman of the Electricity Board, Shri Mangal Behari, had directed that appropriate charges should be made, but no payment of hire charges was made either by the Government or by the Workers' Union.

5.22 On June 22, 1975, the Opposition parties had organised a rally which was to be addressed by Shri Jaya Prakash Narayan. This caused considerable concern in the official circles. This is seen from the statement of Shri Krishan Chand, Lt. Governor, who stated that

"Several meetings were also held in the Home Ministry to consider as to how best the situation developing from the speeches of Shri Jaya Prakash Narayan could be dealt with. At the official level, the view was that whatever might be done in respect of other leaders, Shri Jaya Prakash Narayan's arrest would make it more difficult to preserve public peace than if he was not arrested This view eventually did not prevail. However, Shri Jaya Prakash Narayan could not come to Delhi to address the meeting at Ramli Grounds on June 22, 1975."

5.23 While Government bodies were vying with each other to show their support to or sympathy for the Prime Minister by misusing Government resources, there were Government employees, both highly and lowly placed, who were not willing to be a party to what they thought was wrong and improper in terms of employment of Government resources for a political party for partisan purposes. Shri R. N. Bhatnagar of the NDMC opposed the diversion of the NDMC trucks from the normal duties to proceed to the P.M.'s House, and lay in front of a truck of the NDMC, which was sought to be diverted to proceed to the P.M.'s House; He pleaded that if the employees and the authorities wanted to signify their support to Smt. Indira Gandhi, they were welcome to do so but not at the cost of the civic resources.

5.24 Certain employees of the DESU, who refused to participate in these rallies, were allegedly beaten up by the more enthusiastic amongst the supporters of the Prime Minister.

5.25 Shri Mangal Behari, IAS, the Chairman of the Rajasthan Electricity Board became the victim of the

wrath of the State Government of Rajasthan as he had refused to fall in line with the demand for sending the Electricity Board workers in the Electricity Board trucks, free of cost to attend the rally in Delhi arranged on June 20, 1975 to show support to and solidarity with Smt. Indira Gandhi. The details of the incident will be set out hereafter when the Commission deals with the case of Shri Mangal Behari.

5.26 While the Government resources in Delhi and elsewhere were being utilised to demonstrate support in favour of the Prime Minister, the law was also discriminately applied to the Congress party as against the other parties. Enforcement of prohibition of meetings under section 144 of the Criminal Procedure Code, which had become a normal feature in the vicinity of the Prime Minister's House, was relaxed when it came to demonstrations and rallies arranged by the Congress party in support of the Prime Minister. This matter was reported to the President, who sent for the Lt. Governor of Delhi and enquired of him as to why the other parties were not being given the same facilities as were being given to the Congress party. The Lt. Governor stated before the Commission that he had told the President that if the opposition parties were also directed to have the same facilities, that would have led to clashes creating a law and order situation. The Lt. Governor further stated that this relaxation was made in favour of the Congress party in the order under section 144 of the Code of Criminal Procedure at the instance of the then Prime Minister.

5.27 While these demonstrations of sympathy and support to the Prime Minister were going on apace, the Intelligence Bureau of the Government of India was being used to maintain surveillance on the activities of some of the important Congress leaders and Ministers. The Commission came across a Top Secret note dated June 18, 1975, sent by the then Director, Intelligence Bureau, to the Prime Minister's Secretariat. It contains matters which among other things could have been compiled only on the basis of a physical watch and telephone tapings of the persons concerned. This raises a very important issue which has relevance to the assault on the privacy of the individuals and even of Ministers of Government for purposes which are other than those strictly necessary for ensuring the security of the State.

5.28 Shri Jagjiwan Ram, then Minister in Smt. Indira Gandhi's Cabinet stated before the Commission that even before the imposition of the Emergency, his movements were watched and that his telephone was tapped. This he was able to assert on the basis of the information, which was furnished to him by the concerned officials, who owed loyalty to him. He was very critical of the Intelligence Bureau, who he said, was feeding the Prime Minister with information—some correct, some incorrect and some fabricated. After the imposition of the Emergency, the watch on him was intensified. Shri Jagjiwan Ram felt very strongly about the physical watch on the Ministers and citizens as it was a gross interference with the rights of citizens and their individual freedom which should not be permitted in a democracy. He felt that this was happening even before the Emergency and was intensified during the Emergency and according

to him it had not ceased even after the Emergency. He was also critical of the employment of the Intelligence Bureau for assessing the election prospects of the Congress, and ascertaining through the Intelligence Bureau the suitability of candidates for contesting the election on behalf of the Congress Party. Intelligence Bureau officers conducting such inquiries were fed with misleading information by interested candidates and in consequence the feed back to the Prime Minister by the Intelligence Bureau proved equally misleading.

5.29 The decision to take certain drastic steps including even the declaration of Emergency was, apparently, in contemplation even as early as June 22, 1975. On June 22, 1975, Shri R. K. Dhawan rang up Andhra Pradesh Chief Minister Shri J. Vengala Rao, and told him to be available at Delhi on June 24, 1975, when the judgment of the Supreme Court relating to the stay order applied for by Smt. Gandhi pending decision of the appeal filed by her was expected to be announced. Presumably, the order which the Supreme Court would make was to be the deciding factor on whether the drastic action contemplated to be taken, should in effect be instituted. If the judgment had been in the nature of a categorical and an unconditional stay, probably no action of the nature, which was ultimately taken, would have followed. But the Supreme Court gave only a conditional order. On June 24, 1975, Shri Justice Krishna Iyer delivered his judgment on the appeal of Smt. Indira Gandhi. The operative portions of the judgment are as follows :

- “(i) Subject to paragraph (iii) below there will be a stay of the operation of the judgment and order of the High Court under appeal.
- (ii) Consequently, the disqualification imposed upon the appellant as a statutory sequel under section 8A of the Act and as forming part of the judgment and order impugned will also stand suspended. That is to say, the petitioner will remain a Member of the Lok Sabha for all purposes except to the extent restricted by para (iii) so long as the stay lasts.
- (iii) The appellant petitioner, a Lok Sabha Member, will be entitled to sign the register kept in the House for the purpose and attend the Session of the Lok Sabha. But she will neither take part in the proceedings in the Lok Sabha nor vote, nor draw a remuneration in her capacity as a Member of the Lok Sabha.
- (iv) Independently of the restrictions under para (iii) on her Membership of the Lok Sabha, her right as Prime Minister or Minister so long as she fills that office, to speak in and otherwise to take part in the proceedings of either House of Parliament or attend sitting of the Houses (without the right to vote) and to discharge other functions such as are laid down in the Article 74, 75, 78, 88 etc. or under any other law, and to draw salary as Prime Minister, shall not be affected or detracted from on account of the conditions contained in the stay order.”

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5.30 Since the judgement was conditional, it appears to have been decided that the plan of taking drastic action was to be gone through with expedition and despatch.

5.31 According to Shri Krishan Chand, the Lt. Governor, Delhi, even as early as the evening of 23rd, a decision had been taken to take the Opposition leaders into custody soon after the Opposition rally, scheduled for June 24, was held. Lists of the Opposition leaders, which were to be arrested were also under preparation.

5.32 It appears from the report dated June 18, 1975, of the Director of the Intelligence Bureau, Shri Atma Jaya Ram that considerable political activity took place between June 15 and 18. The important aspects of the political activity were that Shri Krishan Kant, Shri Chandar Shekhar and Shri Mohan Dharia were active in putting forth the view that Smt. Indira Gandhi should step down and that the party should elect a new leader. Smt. Lakshmi Kanthamma was also of this view. Shri Krishan Kant pointedly expressed the view that so long as Smt. Gandhi remained in office the Opposition would get “a one-line programme” and it could snowball into a revolution. Shri Mohan Dharia was advised by Shri Y. B. Chavan in the afternoon of June 17 not to raise any dissent in the Parliamentary Party meeting on June 18. S/Shri Chandar Shekhar and Krishan Kant met Shri Bahuguna on June 17, 1975 at U.P. Nivas. Substantial portions of this report have not been verified to be correct and some of them have been denied by Shri Jagiwan Ram, who made his statement before the Commission.

Some of the important events between June 23 and 25, 1975

5.33 It was expected that a rally would take place, headed by Shri Jaya Prakash Narayan on June 24, 1975. In the evening of June 23 an indication was given to Shri Krishan Chand, Lt. Governor by Shri R. K. Dhawan that the Opposition Leaders may have to be taken into custody after the rally on June 24 and lists of prominent political leaders to be arrested were prepared by S. P. (CID) at P.M's House. Shri Krishan Chand stated that he was shown the lists and that changes were made in the lists and continued to be made from time to time as a result of continued discussions at P.M's House, but that he did not see the final list. He also stated that the Opposition rally did not take place on June 24 as announced to take place on that day, and so the action proposed to be taken on June 24 was stayed.

5.34 On June 24, Shri Justice Krishna Iyer announced the judgment. The Hindi version of the judgment broadcast over the All India Radio gave the complete story. This gave rise to certain angry reactions and the Minister spoke to the Director of News. Within a short time a revised Hindi version was broadcast which was intended to be favourable to Smt. Indira Gandhi, as broadcast in the English bulletin at 4 p.m. In the meanwhile, the authentic copies of the judgment were obtained. According to Shri Krishan Chand, after the import of the judgment was fully realised, it was decided to take drastic action

against the Opposition leaders as soon as there were tangible signs of any effort on their part to dislodge the Prime Minister from her office and it was decided by the Prime Minister that action would be taken on June 25 after the Opposition rally.

5.35 On June 24, 1975, Shri J. Vengala Rao received a telephonic message from Shri R. K. Dhawan requesting him to meet the Prime Minister on June 25. Shri Vengala Rao has stated that Smt. Indira Gandhi informed him that having regard to the prevailing conditions and the contemplated country-wide agitation, it had been decided to take strong and deterrent action; and as this was sure to cause resentment and there was a possibility of some violent action, it would be necessary to take all preventive actions including arrests of persons who were likely to cause disturbance. He further stated that he was requested to pass on the message to the Chief Minister of Karnataka, who could not be present and that both the Chief Minister of Karnataka and Shri Vengala Rao were asked to be available on the telephone on June 25 when the final decision of the Government of India would be communicated to them by Shri Dhawan. Shri Vengala Rao left by an IAF plane, which was specially arranged for him for making a trip to Bangalore. He stated that he met the Chief Minister of Karnataka at Bangalore, apprised him of what the Prime Minister wanted him to tell him and in the evening he reached Hyderabad by the same plane.

5.36 Shri P. C. Sethi, Chief Minister of Madhya Pradesh, was told at the residence of the Prime Minister on the morning of June 25 by Shri Om Mehta, Minister of State for Home Affairs, about the guidelines that he would have to observe in taking into custody certain persons, who were capable of creating disturbances. According to Shri P. C. Sethi, it took place in the presence of the Prime Minister.

5.37 The Prime Minister tried to get in touch with Shri Harideo Joshi, Chief Minister of Rajasthan, but she was unsuccessful in conveying that message to Shri Harideo Joshi on telephone. Shri Sethi was then asked to contact Shri Harideo Joshi at Banswara on his way to Bhopal and convey the same message to him. Accordingly, Shri Sethi went to Bhopal via Banswara by an IAF aircraft. At Bhopal Shri Sethi took steps in pursuance of the instructions that had been given to him by the Prime Minister. Shri Harideo Joshi returned to Jaipur by the same aircraft, which after leaving Shri Sethi at Bhopal, had come to Banswara for this purpose.

5.38 The records maintained at the Air Headquarters of the IAF confirm the flights of Shri Vengala Rao, Shri P. C. Sethi and Shri Harideo Joshi by the IAF aircrafts on June 25, 1975. No payments were apparently made by anyone for the use of the IAF aircrafts.

5.39 Shri S. K. Misra, who was the Principal Secretary to the Chief Minister, Haryana, has in his statement before the Commission, stated that between 12 noon and 2 p.m. on June 25, 1975, he received from Delhi a telephonic information from Shri Bansi Lal, the then Chief Minister of Haryana, asking him

to alert the Deputy Commissioners to remain at their Headquarters and be available on telephones and also to reserve huts at Sohna Tourist Complex for two VIPs, who were to reach there on the night of June 25/26, 1975. Lists of persons to be taken into custody were to be prepared by A.D.I.G., C.I.D. Shri Misra met Shri Bansi Lal at about 10 p.m. on his return from Delhi. At that time the latter told him that Emergency was expected to be declared that night. This statement of Shri S. K. Misra is corroborated by the statement of Shri N. K. Garg, the then Deputy Commissioner, Rohtak, who had also met Shri Bansi Lal at Rohtak at about 4.30 p.m.

5.40 Shri M. K. Miglani, who was the Deputy Commissioner at Gurgaon, had taken steps to reserve two huts in Sohna Tourist Complex on June 25 in pursuance to the message received from Shri S. K. Misra. He also contacted the Lt. Governor of Delhi and in response to his directions detailed one of his officers to reach Haryana Bhawan, New Delhi, at about 10 p.m. on the night of June 25, 1975, where the Delhi Administration authorities were to contact him.

5.41 The District Magistrate, Darbhanga (Bihar) had conveyed to the then Chief Minister of Bihar a message, which he had received from Patna, to the effect that the Chief Minister of Bihar was to contact the Prime Minister's House at about 9 p.m. on the night of June 25. Accordingly, the Chief Minister contacted the Prime Minister's House and after the telephonic talk that the Chief Minister had with the Prime Minister, the Chief Minister is reported to have told the District Magistrate that he wanted to get back to Patna the same night by road and he wanted to know the provisions under the Defence of India Rules with regard to the Press. The Chief Minister told the District Magistrate to convey to the Home Secretary and IGP the desire of the Chief Minister that they should meet him at his residence at about 2.30 a.m. on the night between June 25/26, 1975.

5.42 According to the statement of Shri Krishan Chand, all arrangements in connection with the impending arrests were discussed at a meeting in the afternoon of June 25 in the room of Shri R. K. Dhawan in the presence of Shri Om Mehta, the then Minister of State for Home Affairs, Shri Bansi Lal and Shri Bajwa, S.P. (CID), Delhi Administration. Shri Krishan Chand then called a meeting at about 7.30 p.m. at Raj Niwas at which the Chief Secretary, I.G. Police, Deputy Commissioner, DIG (Range) and others were present. The Chief Secretary of Delhi Administration, Shri J. K. Kohli had been instructed to visit the Tihar Jail to arrange necessary accommodation in the jail for those who would be rounded up in the course of the night between June 25/26, 1975 and taken to Tihar Jail. Accordingly, Shri Kohli had visited the Tihar Jail at about 8.15 p.m. in the night, checked up the availability of accommodation there and had tipped off the Superintendent of Jail that he should be prepared to receive about 200 "Naga Political Prisoners", by the next morning.

5.43 Efforts were also made to ensure that some important newspapers were prevented from bringing

out the morning editions on June 26, 1975. Shri B. N. Mehrotra, Ex-General Manager, Delhi Electric Supply Undertaking has stated that he was called to Raj Niwas by the Lt. Governor at about 10 p.m. and told that the electricity connections to the Press were to be disconnected from 2 a.m. that night and Shri Krishan Chand said that these were the orders from the Prime Minister's House and had got to be carried out. Shri Mehrotra carried out the orders and reported compliance thereof at about 2 a.m. to Shri Navin Chawla, Secretary to the Lt. Governor.

5.44 Efforts were also made to prevent publication of newspapers in Chandigarh and Bhopal. Shri N. P. Mathur, who was the Chief Commissioner at Chandigarh, had not received any direct instructions either from the Home Secretary or from any other responsible quarters in Delhi. Shri N. P. Mathur had contacted over the phone on June 25, 1975 the Home Secretary, Shri S. L. Khurana to obtain confirmation of the instructions of the Chief Minister of Punjab. Shri Khurana disclaimed any knowledge on the subject. He, therefore, did not act on the verbal instructions received by him from Shri Zail Singh, Chief Minister of Punjab, to lock up "The Tribune" and its Editor, Shri Madhavan Nair at Chandigarh.

5.45 Initially instructions were issued by the Chief Minister of Madhya Pradesh at about 9 or 10 p.m. on June 25, 1975 to the effect that news about the arrests should not appear in the newspapers of Bhopal and other important places. The same instructions were subsequently countermanded as testified by Shri Narendra Prasad, the then S.P., Bhopal.

5.46 It would, therefore, appear clear that in varying degrees the Chief Ministers of several States were taken into confidence as early as the morning of June 25, and they had been instructed to take steps to take action on receipt of the advice from the Prime Minister's House that night. Those who had information to this effect were the Chief Ministers of Andhra Pradesh, Karnataka, Madhya Pradesh, Rajasthan, Haryana, Punjab, Bihar and West Bengal. The Lt. Governor of Delhi was fully in the picture even before June 25, 1975.

5.47 Shri Sidharth Shankar Ray, Chief Minister of West Bengal, has stated that he received a message from the Prime Minister's Secretariat on the morning of June 25, and, accordingly, he went to her house. When she came into the room where he was waiting, she had some reports in her hand and she stated that the country was in great difficulty; and that in view of the all-round indiscipline and lawlessness, she wanted that something should be done. According to Shri Ray, she had told him on two or three occasions prior to this that India required a shock treatment and something had to be done and some sort of emergent power or drastic power was necessary. Shri Ray remembered that one such occasion when she had mentioned about the shock treatment was sometime before the announcement of Allahabad judgment on June 12, 1975. On this occasion he had told her that they could manage with the laws, which were already on the statute books. In this context he had also mentioned the success with which they had tackled

the law and order problems of West Bengal within the framework of the laws then in force. According to Mr. Ray, the reports that she read out indicated that there was lawlessness or threats of lawlessness in many parts of the Northern India; that while they were discussing, a bearer came in with a piece of paper from which she read out and said that this was a report giving advance information about what Shri Jaya Prakash Narayan was going to say at a public meeting scheduled for that day in Delhi; that Shri Jaya Prakash Narayan would be calling for a mass movement within two or three days all over India and that the usual things would be said by him; such as, parallel administration, parallel courts, students not to join Universities, Schools and Colleges; appeal to policemen and to armed forces not to obey what were supposed to be illegal orders etc. Shri Ray said that he did not know from where this report originated. According to Shri Ray, there were certain things, which when they came from the Prime Minister, he could not say that they were totally wrong, particularly if they were factual; but, according to him, she was firm on the factual aspect that those reports indicated that India was drifting towards chaos and anarchy. Shri Ray then stated that he told her that he would like to consider the steps that had to be taken, after consulting the relevant literature on the subject; that she gave him the impression that she was seriously and sincerely disturbed with the conditions prevailing in the country; and that he asked for some time to consult the relevant law and left the Prime Minister's house; that he came back at about 4.30 or 5 p.m. and told her that she could consider if she so desired, Article 352 of the Constitution for the purpose of imposing internal Emergency; and thereupon she asked Shri Ray to go along with her to the President immediately. The President was then contacted and an appointment was taken and she went to the President along with Shri Ray. She gave to the President a summary of what she had told Shri Ray with regard to the facts; that the President heard her for about 20 minutes to half an hour and then asked Shri Ray as to what were the exact words in the Constitution; that the President then told the Prime Minister to make her recommendation; and when she was returning with him from the President's house, he told her that she should involve the other leaders also in that decision; that though he did not name anyone in particular, except the name of Shri Dev Kant Barooah, who was the President of the Indian National Congress, he wanted that she should involve the other leaders and talk to them about this matter; that she wanted to know the answers to three questions, which she had raised :

"Firstly, she wants to take a decision without going to the Cabinet. Is it possible? Can it be done?

Secondly, what should be the language of the letter to be addressed to the President?

Thirdly, what should be the text of the Proclamation?"

Shri Ray thereafter consulted the Business Rules and a notification pertaining to proclamation of Emergency in 1971. According to Shri Ray the first category dealt with matters, which must go to the Cabinet; the second category dealt with matters, which need not

go at all to the Cabinet; and the third category dealt with matters which could be dealt with by the Prime Minister, but had to be ratified by the Cabinet. Smt. Gandhi said that she wanted to take the decision herself and that she would call a meeting of the Cabinet early next morning. Shri Ray then told her that if she wanted to take the decision herself, she should write recommending to the President the proclamation of Internal Emergency and avail herself of the relevant Rules, as provided in the third category of the Business Rules. Shri Ray prepared two drafts. According to him, the letter, which Smt. Gandhi had written to the President recommending the proclamation of the Emergency and which was published subsequently in the proceedings of the Commission, was not the draft which he had made on the subject and given to the Prime Minister. According to Shri Ray, Shri Barooah was also called in later in the evening and his advice was sought by Smt. Gandhi as to the kind of speech she should make on the radio announcing the proclamation of Emergency. Smt. Gandhi, Shri Barooah and Shri Ray worked over the speech and this exercise took a long time—perhaps about three hours. This was because Shri Sanjay Gandhi used to come into the room and ask his mother to come out. Smt. Gandhi would then go out and not return for 5 to 10 minutes, and what she did when she went out, Shri Ray did not know. After finishing the speech writing, when he was going out through the door of the room, Shri Ray heard to his surprise from Shri Om Mehta that orders had been passed to lock-up the High Courts, the next day and to cut off the electricity connections to all newspapers. Shri Ray was surprised because he had told her that under the Emergency one could not take any action unless rules were framed. Shri Ray said that the locking up of the High Courts and cutting off of electricity connections could not just happen and he told that to those who were present there. He stayed on and wanted to see Smt. Gandhi and convey to her his reactions. He said that he would not leave unless and until she saw him because what was happening was important. Smt. Gandhi was late in coming and while he was waiting Shri Sanjay Gandhi met him in a highly excited and infuriated state of mind and told him quite rudely and offensively that he did not know how to rule the country. Shri Ray did not lose his temper but made him understand that he should mind his own business and should not try to interfere with what was not his sphere. Later Smt. Gandhi came and he told her about the impending closure of the High Courts and cutting off of electricity connections to newspapers. Smt. Gandhi immediately said that this should be stopped.

5.48 Shri Om Mehta in his deposition before the Commission has stated that he had given information to Shri Ray in the Prime Minister's house that night regarding the intended closure of the courts and cutting off of electricity, which had come to his knowledge while he was waiting in one of the rooms of the Prime Minister's house on that night.

5.49 Shri Brahmananda Reddy, the then Home Minister, has said in his statement that he was called to the house of the Prime Minister at about 10.30 p.m. and was told that on account of the deteriorating law

and order situation it was felt necessary to impose Internal Emergency. He told Smt. Gandhi that there was already an Emergency on and that the powers already available under the existing Emergency could be availed of to deal with the situation. Thereafter, he left, but he was sent for again a little later and he was told by Smt. Gandhi that his earlier suggestion had been examined and it was found that the declaration of Internal Emergency was considered necessary. Shri Brahmananda Reddy thereupon told her to do what she thought was best. He has stated that on this occasion he also signed a letter to the President of the Republic making reference to the telephonic conversation which the then Prime Minister had with the President and appended the draft proclamation of Emergency for the President's assent along with his letter. The letter signed by Shri Brahmananda Reddy was on a plain sheet of paper and was not on a sheet with the letter-head of the Home Minister of India.

5.50 Shri Akhtar Alam, who functioned as the Special Assistant to the President of India, has stated that an important letter from the Prime Minister's house was delivered to him at about 10.30 p.m. on June 25, 1975, and that he delivered it to the President, who sent for his Secretary, Shri K. Balachandran and also Shri Neelkanthan, Deputy Secretary, who dealt with such letters. Some discussion ensued between the President and the Secretary about the wording of the letter about which Shri Balachandran raised certain doubts. At about 11.20 p.m., Shri Dhawan came and he brought with him some papers. He says that he did not know what the papers were and he did not know whether the President signed those papers. The next morning at about 10.30 or 11 a.m. Shri Akhtar Alam was given by the President the letter from the Prime Minister and he kept it in his custody till he handed it over to Shri Balachandran when Shri Akhtar Alam left the post in February, 1977.

5.51 Shri K. Balachandran in his deposition has referred to the top secret letter received from the Prime Minister Smt. Indira Gandhi to the President. This letter referred to the discussion which the Prime Minister had with the President earlier in the day. She had stated that the President was satisfied on the score of the imminent danger to the security of India due to internal disturbances. She had also stated that if the President was satisfied on this score, a proclamation under Article 352(1) of the Constitution had become necessary; and that she was enclosing a copy of the draft proclamation for the President's consideration. Shri Balachandran has stated that there was no draft proclamation enclosed with the letter. According to Shri Balachandran the Prime Minister had also stated that she was not consulting the Cabinet due to shortage of time and the matter was urgent; and that she was, therefore, permitting a departure from the Transaction of Business Rules in exercise of her powers under Rule 12 thereof. According to Shri Balachandran he had advised the President that it would be Constitutionally impermissible for him to act in the manner suggested in that letter; and that he had to act on the advice of his Council of Ministers; and, therefore, his personal satisfaction in this matter would not arise. The letter from the Prime Minister

indicated that the Cabinet had not considered the matter. Moreover, it was worded in such a manner as would make it appear that the decision to declare Emergency was that of the President based on his personal satisfaction. The President, apparently, saw the force of this argument and contacted the Prime Minister on the telephone immediately thereafter. Afterwards, he left the President's room, and came back after about 10 minutes. In the intervening brief period, Shri Dhawan had visited the President and had delivered the draft of the proclamation of Emergency for his signature. The President told him that he had signed the proclamation and given the same to Shri Dhawan, who had taken it back with him along with the Prime Minister's letter. The next day Shri Akhtar Alam had told Shri Balachandran over the telephone that a revised letter had been received from the Prime Minister, which was subsequently passed on to him by Shri Akhtar Alam in February 1977, and he kept it in his file.

5.52 The Prime Minister's letter and the proclamation of Emergency which are available in the President's office file are reproduced below:—

“TOP SECRET

PRIME MINISTER

INDIA

NEW DELHI June 25, 1975.

“Dear Rashtrapatiiji,

As already explained to you, a little while ago, information has reached us which indicates that there is an imminent danger to the security of India being threatened by internal disturbance. The matter is extremely urgent.

“I would have liked to have taken this to Cabinet but unfortunately this is not possible tonight. I am, therefore, condoning or permitting a departure from the Government of India (Transaction of Business) Rule 1961, as amended up-to-date by virtue of my powers under Rule 12 thereof. I shall mention the matter to the Cabinet first thing tomorrow morning.

“In the circumstances and in case you are so satisfied, a requisite Proclamation under Article 352(1) has become necessary. I am enclosing a copy of the draft Proclamation for your consideration. As you are aware, under Article 352(3) even when there is an imminent danger of such a threat, as mentioned by me, the necessary Proclamation under Article 352(1) can be issued.

“I recommend that such a Proclamation should be issued tonight, however, late it may be, and all arrangements will be made to make it public as early as possible thereafter.

With kind regards,

Yours sincerely,

(Sd/- Indira Gandhi)”

“PROCLAMATION OF EMERGENCY”

In exercise of the powers conferred by Clause 1 of Article 352 of the Constitution, I, Fakhruddin Ali Ahmed, President of India, by this Proclamation declare that a grave emergency exists whereby the security of India is threatened by internal disturbance.

New Delhi—25th June, 1975.

PRESIDENT”

5.53 On the basis of the evidence it is clear that some of the important functionaries in the Home Ministry, Cabinet Secretariat and the Prime Minister's Secretariat, who should have been consulted before such an important decision was taken, did not know anything about the proclamation of Emergency till very late and some of them learnt about it only on the morning of June 26, 1975.

5.54 Shri P. N. Dhar, Secretary to the Prime Minister, in his statement has said that he knew about it only when he was called to the Prime Minister's House around 11.30 p.m. on June 25, when he was given for perusal the draft of the speech that the Prime Minister was going to make over the All India Radio.

5.55 Shri B. D. Pande, the Cabinet Secretary, received a phone-call from the Prime Minister's House at about 4.30 a.m. on June 26, and was told that a Cabinet meeting was scheduled to take place at 6 a.m. that morning. He knew about the proclamation of Emergency for the first time that morning only. He was surprised as to how and who functioned to bring about the large number of arrests which had taken place between 25th and 26th June. Normally, all instructions for such expeditious actions were routed through the Ministry of Home Affairs which used their own channels of communications.

5.56 According to Shri B. D. Pande, the need for the declaration of emergency or the situation in the country warranting any such declaration had not figured in any of the Cabinet meetings preceding June 26, 1975.

5.57 Shri Atma Jayaram, Director, Intelligence Bureau, has stated that he learnt about the proclamation of Emergency only after he went to the office on June 26th.

5.58 Shri S. L. Khurana, who was the Home Secretary to the Government of India, had known about it only when he attended the Cabinet meeting on 26th morning for which he received intimation past 6 a.m. Accordingly, he arrived at the Cabinet meeting only around 6.30 a.m. when the meeting was already on.

5.59 Shri H. R. Gokhale, former Minister of Law and Justice, came to know about the proclamation of Emergency for the first time at the Cabinet meeting held on the morning of June 26, 1975. Neither he nor his Ministry was consulted with regard to the proclamation of Emergency at any time before, nor was the proclamation vetted by him or by his Ministry.

5.60 Some of the special features of the proclamation of Emergency, as gathered from the official records, are as follows :—

- (a) on the economic front there was nothing alarming. On the contrary, the whole-sale price index had declined by 7.4 per cent between December 3, 1974 and the last week of March 1975 as per the Economic Survey 1975-76, a Government of India Publication;
- (b) on the law and order front, the fortnightly reports sent by the Governors of various States to the President of India and by the Chief Secretaries of the States to the Union Home Secretary indicated that the law and order situation was under complete control all over the country;
- (c) the Home Ministry had received no reports from the State Governments indicating any significant deterioration in the law and order situation in the period immediately preceding the proclamation of Emergency;
- (d) the Home Ministry had not prepared any contingency plans prior to June 25, 1975, with regard to the imposition of internal Emergency;
- (e) the Intelligence Bureau had not submitted any report to the Home Ministry any time between 12th of June and 25th of June, 1975, suggesting that the internal situation in the country warranted the imposition of internal Emergency;
- (f) the Home Ministry had not submitted any report to the Prime Minister expressing its concern or anxiety about the internal situation in the country. Till after the Emergency was lifted, the Home Ministry did not have on its file the copy of the communication which was sent by the Prime Minister to the President recommending imposition of the Emergency;
- (g) while the Director of Intelligence Bureau, the Home Secretary, the Cabinet Secretary and the Secretary to the Prime Minister had not been taken into confidence, Shri R. K. Dhawan, the then Additional Private Secretary to the Prime Minister had been associated with the preparation and promulgation of the Emergency right from the early stage;
- (h) Shri Om Mehta, the then Minister of State in the Ministry of Home Affairs, appears to have been taken into confidence much earlier than the Home Minister, Shri K. Brahmananda Reddy, who came into the picture only when the draft proclamation was forwarded to the President;
- (i) while the Lt. Governor of Delhi and the Chief Ministers of Haryana, Punjab, Madhya Pradesh, Rajasthan, Karnataka, Andhra Pradesh, Bihar and West Bengal had been given advance intimation by the Prime

Minister about the contemplated action, no such advance information was given to the Governments of U.P., Maharashtra, Gujrat, Tamil Nadu, J&K, Tripura, Orissa, Kerala, Meghalaya and other Union Territories. In fact, Shri H. N. Bahuguna, the then Chief Minister of Uttar Pradesh has stated in his affidavit that he came to know about the proclamation of Emergency on the morning of June 26, when he was having break-fast along with Shri Uma Shankar Dikshit and Shri Keshav Deo Malaviya, the Central Ministers, and they were as surprised as he was about the promulgation of Emergency.

5.61 As stated earlier, a notice under rule 5(2)(a) of the Commissions of Inquiry Rules was issued to Smt. Gandhi requesting her to file her statement in terms of rule 5(3). No such statement was filed by her. Smt. Gandhi was also issued a summons under section 8B of the Commissions of Inquiry Act. Though she responded to the summons under section 8B of the Act, she declined to take oath and give evidence on oath when the Commission desired to examine her under section 5(2) and according to the procedure analogous to the provisions of the Civil Procedure Code. But in one of the letters addressed by her to the Commission, dated November 21, 1977, in response to the invitation which was initially extended to her to assist the Commission, Smt. Gandhi had submitted a detailed reply to the Commission in regard to certain matters and, *inter alia*, raising certain objections to the procedure adopted by the Commission. In the course of her reply, she touched on the subject of declaration of Emergency and stated :

"I should further like to point out that the terms of reference of this Hon'ble Commission are one-sided and politically motivated. While they empower the Hon'ble Commission to enquire into the excesses committed during the emergency, they are silent about the circumstances which led to its declaration. This country is vast and beset with deep-rooted and wide-ranging problems. The administrative machinery is fragmented. Urgent measures have to be taken. Programmes are implemented at various levels and by different individuals and agencies. Some excesses in their implementation cannot always be avoided nor do they always come to notice at that time. I have publicly expressed regret for any unjust hardship caused to any individual. But if the professed purpose of the inquiry is to check abuse of power in the future, it is equally imperative that the circumstances which created chaotic conditions in the nation before the emergency should also be enquired into and not allowed to be repeated. For two years preceding the emergency the country was in the grip of grave crisis. The economic situation had deteriorated due mainly to internal and international causes beyond our control. Interested parties and groups wished deliberately to aggravate the situation for their own gain. Freedom of speech and expression were used to spread hatred and

parochial regional sentiments. Noble institutions of learning were turned into hot-beds of political intrigue. Public property was destroyed at the slightest excuse. A Minister in the present cabinet is reported to have proudly claimed, "In November last (1975) in the Union State of Karnataka alone, we caused derailment of 52 trains". The attempt was to paralyse national life. The dissolution of the Gujrat Assembly was forced by undemocratic means. Duly elected legislators were beaten and intimidated into resigning from their seats in the Assembly.

"Relying upon the judgment of the Allahabad High Court, the demand for my resignation was made in the name of democracy and morality. But what was that morality and how did democracy come in? If at all, moral considerations were on my side as nothing had been found by the High Court against me which smacked of moral turpitude. I had lost on a legal technicality but law also gave me the right to reconsideration of the judgment by the highest court. And the act of seeking to remove a duly elected leader of the majority party through threats to gherao me and with a call to the Army and the Police to revolt could not be justified in the name of any known democratic principles. A chaotic state of affairs similar to that in India before July 1975 prevailed in France when de Gaulle came to power in 1958. His major response was constitutional reform and the introduction of Article 16 in the new Constitution which goes a long way to show how necessary it became for my government to resort to the emergency provisions in the Constitution if India were to pull herself out of the impending disaster. The new Article provided *inter alia* that "when the regular functioning of the constitutional governmental authorities is interrupted, the President of the Republic shall take the measures commended by the circumstances" to restore order.

"It must also be borne in mind that it would be impossible for a democratically elected government to function effectively if it is to live under the fear of politically inspired inquisitorial proceedings against its policies and decisions by a subsequent government."

5.62 Smt. Gandhi sent yet another reply dated December 2, 1977, in response to another invitation, which was extended to her by the Commission when the case dealing with the circumstances leading to the declaration of Emergency was coming up for the First Stage of its hearing before the Commission from December 5, 1977 and the following days. The relevant portions of her reply are reproduced below :

"In fact, that the declaration of Emergency, according to this Hon'ble Commission, might be an excess and, therefore, calls for an inquiry, is a matter which does not fall within the purview of this Hon'ble Commission. The proclamation of Emergency

by the President was a Constitutional step. It was approved by the Cabinet and duly ratified by both Houses of Parliament in terms of Article 352(2) of the Constitution. After the ratification, the proclamation which was political in character, became an Act of Parliament. In the United States the exercise of political power by the President has been held to be beyond challenge. Chief Justice Marshall observed in *Marbury v. Madison* :

"By the Constitution of the United States the President is invested with certain important political powers in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character and to his own conscience. The Subjects are political. They respect the nation, not individual rights, and being entrusted to the Executive, the decision of the Executive is conclusive."

"Under the Indian Constitution, on the other hand, the proclamation of Emergency has been made subject to ratification by parliament.

No authority in this country, not excluding any commission appointed under the Commissions of Inquiry Act, can sit in judgment over such an Act of Parliament. For any political decision, the Government under our Constitution is answerable only to Parliament. If this Hon'ble Commission arrogates to itself the power to determine that the declaration of Emergency was an excess, this Hon'ble Commission will not only be stultifying the Constitutional Scheme, but also establishing a precedent which will make serious inroad into Parliamentary supremacy with disastrous consequences to Parliamentary freedom. Even the terms of reference of this Hon'ble Commission do not warrant such an inquiry. They are strictly confined to the determination of alleged excesses during the emergency or in the days immediately preceding it.

But apart from this, I should like to bring to the notice of the Hon'ble Commission that while making its pronouncement on my submission that the terms of reference were one-sided and politically motivated and that it was equally imperative that this Hon'ble Commission should go into the circumstances which led to the declaration of Emergency, this Hon'ble Commission observed as follows :

"But one thing I propose to bring to the notice, I am only concerned with the declaration of Emergency, if it amounts to an excess and not otherwise. If on consideration of the material before me, I am *prima facie* of the view that declaration of Emergency could be regarded as an excess, an inquiry in open will be made. If, however, there is no such view formed by me, no such inquiry will be made."

"This observation of the Hon'ble Commission, I most respectfully submit, is not sustainable. In the first place it is tantamount to saying: There shall be an inquiry into the declaration of Emergency if I can be damned in the process, but there shall be no inquiry if others whose actions justified the declaration of Emergency, are likely to be damned. Secondly, it is difficult to imagine how this Hon'ble Commission can take any decision regarding the declaration of Emergency without full consideration of the range of circumstances and incidents which had accumulated, for a long time preceding the proclamation, into an imminent threat to paralyze duly elected Governments at the Centre and in the States.

During that period, ostensibly the attacks were concentrated upon me. In reality the political opposition had been using this strategy to weaken the Central Government and subvert its socialist and progressive programmes for quite some years. It was a question of change versus the status quo. Secular, democratic socialism on the one hand and retrograde, communal and capitalistic forces on the other had been struggling against each other to gain the upper hand. The split in the Congress in 1969 gave an edge to this confrontation. The nationalisation of banks and other measures which disturbed entrenched privileges and vested interests, and offered opportunity and help to the poor and weaker sections of our society, created such tremendous popular upsurge that communal and capitalistic elements probably lost all hope of being able to successfully fight on an ideological plane. Hence they changed their methods. Similar such political phenomenon was not peculiar to India. Recent history is replete with such instances.

The vicious campaign of character assassination and denigration waged by political opponents denuded Indian politics of all ideological debates. Even in the 1971 Lok Sabha elections, the opposition did not put forth any alternative economic or social programme. I was the focus of attack as the first target. Ordinary human decency was lost in the process. Their decisive defeat at the polls frustrated their faith in the democratic process. There was then a short interlude during which India faced one of the gravest challenges with which any nation has been confronted. The influx of ten million refugees from Bangladesh, aggression and the subsequent war, unprecedented country-wide drought and the global inflationary spiral aggravated by the oil crisis, and other factors would have upset the economic balance of any rich and developed country. India was fighting for her economic survival. It was during this period that the then Opposition resorted to extra-constitutional means to paralyse our democratic

institutions. As I have explained in my previous statement, there was hardly any sphere of national life which was not sought to be disrupted.

The inevitable distress of many sections of our people was exploited to mount attacks on duly elected Governments and Assemblies of the day. We cannot forget the tragic circumstances leading to the dissolution of the Gujrat Assembly only a few months after its constitution.

It was in this political atmosphere prevailing in the country that the judgment of the Allahabad High Court was delivered and was seized upon by the opposition to whip up political frenzy against me. Although I was in the immediate target, the real design was to dislodge the Congress Government and to capture power through extra-constitutional means. If a duly elected Government can be allowed to be pulled down by threats of violence and demonstrations in the streets and by incitement of the army and the police to revolt, the democratic structure of the nation would collapse. In 1958, while putting the case for constitutional reform the French Prime Minister, M. Gallard said, "Democracy is only in consequence an anarchy if those who hold power by the will of the majority do not also enjoy an authority corresponding to the responsibilities which they assume."

"As Prime Minister of the country I could not abdicate my responsibility to stem the impending disaster merely for fear that my motive in proclaiming the emergency could be suspected. When the democratic institutions of a nation are held to ransom, and the Government of the day rises to the occasion to meet the challenge, certain freedoms of some individuals might be affected. That in fact is the rationale behind Article 352 of the Constitution which authorises the declaration of Emergency. Emergency was not intended to cause suffering and I have expressed deep sorrow for any hardship caused.

It may not be out of place to draw the attention of this Hon'ble Commission to the present Prime Minister, Shri Morarji Desai's recent observations in the Rajya Sabha that there was "nothing like absolute right to anybody." "Every right is subject to the right of the whole society. If the rights of the whole society are in danger, the Government is bound to take action to prevent that danger."

In these circumstances, the Hon'ble Commission's predetermination of certain dates while circumscribing the scope of its inquiry, belies reality. It has been repeatedly proclaimed by members of the present Union Government that it was allegedly because of the Allahabad High Court Judgment of the 12th June, 1975, and the qualified stay given by the Supreme Court on 22nd of June, that

the Emergency was declared for personal reasons, namely, to stultify the judgment by extra-legal means and to maintain my position as Prime Minister by extra-constitutional methods. I have to point out, with utmost respect, that the Commission appears to have projected the theory propagated by my political opponents.

By putting the inquiry beforehand into a predetermined chronological matrix the evidence would naturally proceed under the conditioning of this predetermined matrix, and this untested material will be systematically publicised to make it appear as proof. This, in my humble opinion, directly defeats the ends of justice."

5.63 In response to the Commission's inquiry, the Cabinet Secretariat has brought to the notice of the Commission the relevant portions of the Government of India (Transaction of Business) Rules, 1961. Rule 7 of these Rules reads as follows :

"All cases specified in the Second Schedule to these Rules shall be brought to the Cabinet."

5.64 Clause (da) of the Second Schedule of the Government of India (Transaction of Business) Rules, 1961, reads as follows :

"(da)—Cases relating to a proclamation of emergency under Articles 352 to 360 of the Constitution and other matters related thereto."

5.65 In the light of the foregoing rule, it is not understood how this provision could have been circumvented by the application of Rule 12 of the same Transaction of Business Rules. Rule 12 of the Government of India (Transaction of Business) Rules reads as follows :

"12. *Departure from Rules* : The Prime Minister may, in any case or classes of cases, permit or condone a departure from these rules to the extent he deems necessary."

5.66 In this context, the following information furnished by the Cabinet Secretariat regarding the Transaction of Business is relevant to the issue :

"The business of the Government is transacted in accordance with the Transaction of Business Rules and the Allocation of Business Rules, both of which have been promulgated under Article 77 of the Constitution. The Allocation of Business Rules provide that the business of the Government shall be transacted in the Ministries, Departments, Secretariats and Offices specified in the First Schedule to these rules. The distribution of subjects among the departments is specified in the Second Schedule to these rules. While the President can, on the advice of the Prime Minister, change the allocation of business between departments, nothing in the rules seems to provide for the Prime Minister's Secretariat transacting any business allotted to a particular Ministry.

By virtue of entry 27 under the Home Ministry, matters relating to the emergency provisions of the Constitution (other than financial emergency) are to be dealt in the Home Ministry. This, read with Rule 3 of the Transaction of Business Rules, therefore, requires that all business pertaining to the emergency provisions shall be transacted in the Home Ministry, with cases relating to the proclamation of Emergency being brought before the Cabinet.

The normal procedure for submission of cases to the Cabinet is for the Ministry concerned to send a Note for the Cabinet to the Cabinet Secretariat. This note contains the proposal needing Cabinet approval and should have the approval of the Minister concerned. Thereafter the item is placed before the Cabinet and approval, if accorded, is conveyed to the Ministry by the Cabinet Secretariat. If time is short, the Cabinet Secretariat obtains the approval of the Prime Minister under Rule 12 of the Transaction of Business Rules, and thereafter authorises the Ministry concerned to proceed further in the matter."

"Since the Home Ministry has allotted the work relating to the Emergency provisions of the Constitution, proposals relating to the proclamation of Emergency should normally originate from that Ministry. This would be particularly so when the Emergency is to be declared on grounds of internal disturbances, as the Home Ministry deals with the Intelligence Bureau, Preventive detention and National Integration. It is the Home Ministry which is in touch with the State Governments on matters relating to law and order. The Cabinet Secretariat did not, however, receive any proposals from the Home Ministry in respect of the Proclamation issued on the 25th of June."

5.67 It may be pointed out that even in 1971 when a war was being waged with Pakistan, a proclamation of Emergency was issued without invoking Rule 12 of the Transaction of Business Rules. A regular meeting of the Council of Ministers was convened and the Proclamation was issued thereafter, after obtaining clearance, from the Home Ministry. The Cabinet Secretariat conveyed to the Home Ministry the authorisation to issue the proclamation. Thereafter, the Presidential proclamation was issued.

5.68 The circumstances leading to the declaration of Emergency pursuant to the advice of the Prime Minister leave little room for doubt that the decision to impose Emergency, when there was already in existence an Emergency proclaimed as early as 1971, was exclusively the decision of the Prime Minister. None of her Cabinet Ministers, except Shri Brahmananda Reddy was even aware of the proposal to advise the President pursuant to which a declaration of Emergency was to be made. Even Shri Brahmananda Reddy, Home Minister, was not consulted; but he was merely informed shortly before the advice was tendered and

his assistance was taken only for obtaining a letter from him intimating the decision of Smt. Gandhi and for forwarding the draft Proclamation to the President, pursuant to which the declaration of Emergency was issued. This assistance of Shri Brahmananda Reddy appears to have been taken only as a matter of form and merely because his assistance was perhaps required to formally forward the draft Proclamation to the President.

5.69 It is necessary, however, to say something about the Internal Emergency, which was declared. Under Article 352, as it stood on the relevant date, "(1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect". The condition on which an Emergency may be proclaimed is : the satisfaction of the President that emergency exists whereby the security of India or any part of the territory of India is threatened, whether (a) by war, or (b) by external aggression, or (c) by internal disturbances. The satisfaction may be based on any one or more of the three grounds. The declaration of Emergency by the President has no different effect according as the satisfaction of the President depends upon the existence of the State of war or of external aggression or of internal disturbance. Once a declaration of Emergency is made on satisfaction of one or more of the grounds, the consequences described by Articles 353 and 358 come into operation. It is open to the President to declare that the right to move the court for enforcement of any of the rights conferred by Part III of the Constitution as may be mentioned in the order shall remain suspended for the period during which the proclamation is in force, or for such shorter period that may be specified in the order. The Constitution contemplates declaration of only one Emergency, whether the satisfaction of the President depends upon the existence of Emergency arising out of war or out of external aggression or internal disturbance. The Emergency declared has no different qualities or connotations, according as the ground on which the President is satisfied, depends upon the existence of war or external aggression or internal disturbances. It may be recalled that there was an Emergency already declared and was in operation since December 1971. That Emergency had never been withdrawn. The Defence of India Rules were in operation as promulgated under the Defence of India Act enacted as an aftermath of the Emergency. The provisions of Article 358, by which the fundamental rights under Article 19 were suspended, were also in operation. The Constitution in the opinion of the Commission does not contemplate the issue of an Emergency upon an Emergency already existing, nor prevents the courts from entertaining any challenge to the declaration of this additional Emergency. But the provisions of the Constitution were amended by the 39th Amendment of the Constitution Act, which prevented a challenge being raised. But even when there was already in existence and in operation an Emergency under which powers could be exercised, another Emergency was declared and the original Rules i.e., Defence of India Rules were modified as Defence and Internal Security of India Rules, 1975.

5.70 This was more in the nature of a shock treatment, than a legally permissible Emergency, which could be declared according to the law then in force.

5.71 If, however, an Internal Emergency could be declared apart from the External Emergency, the powers which were exercised before any Rules were framed, i.e. disconnecting the electricity connections of newspaper offices were wholly unauthorised, since there was no law which conferred upon any authority such power. Again, the action taken by the authorities under the directions of the Prime Minister to arrest a number of political leaders was not supported by any law. As will be pointed out hereafter, orders could ~~be~~ were, in fact, issued under the Maintenance of Internal Security Act or any other statutory provision by any authority competent in that behalf after due satisfaction on matters submitted before that authority. *Prima facie*, therefore, the disconnection of electricity connections of a number of newspapers and orders for arrests of a number of political leaders and others without complying with the requirements of law, was unauthorised and amounted to wrongful arrests and detentions; and the disconnection of the electricity was against the provisions of the Indian Electricity Act, 1910.

5.72 It may be necessary also to mention that the conclusions arrived at by the Intelligence Bureau after mounting surveillance upon political leaders and others, including tapping of their telephones raise a grave issue of public interest. It has relevance to the assault on the liberty of an individual, which in a democratic country has very great importance and significance. Even the Ministers of the Government were not spared in the action taken by the Intelligence Bureau. They were subjected to the indignity of being shadowed and their telephones were tapped. Such a power, if at all, could be exercised only when authorised by statutory provisions and circumstances strictly necessary for ensuring the security of the State in grave times either of internal disturbance or external aggression or war and not at other times. On the materials placed before the Commission, there does not appear to be any statutory authority pursuant to which this action of the Intelligence Bureau was taken. In his statement to the Commission, Shri Atma Jaya Ram, the then Director, Intelligence Bureau, has stated that "it was the normal or usual practice to give such intelligence orally or in writing". Such action does not appear to be justified by the existence of any circumstance necessary for ensuring the security of the State against External aggression, war or internal Emergency.

5.73 As already submitted, it is for the Government to decide whether or not the Intelligence Bureau may be used for collecting information for purposes other than those strictly necessary for the security of the State. It would certainly be a travesty of the democratic institutions if the Government constituted by a political party is entitled to watch the activities of other political parties and even of members of its own party. If, however, such power is to be conferred on this institution, it must be by a statute or statutory Rules authorising it in that behalf. It is also to be ensured that this watch or surveillance does not degenerate into

abuse and/or misuse of authority, which may well militate against individual freedom and liberty. A provision should, therefore, be made to see that it is resorted to only in extreme emergencies, when it is thought that it is appropriate to do so. In any event, this watch of the Intelligence agency on individuals and the materials collected thereby should be open to scrutiny to a Board or a Panel composed of officers or of public men before authorising the continuance of the watch. It should be possible to harmonise the demands of the security of the State with the democratic liberties.

5.74 The problems that the I.B. is being called upon to handle are increasingly becoming more and more complex, to be left to the judgment and decision of one individual or even a hierarchy of individuals involved directly with the job. It needs to be realised that the I.B. as an institution plays a very important and vital role in the life and affairs of the nation. On its being able to function efficiently, effectively and yet impartially and objectively, depends not only the security of the State but also the liberty of its citizens. Considering, therefore, the stakes that are involved in the proper and purposeful functioning of the I.B., it is imperative that it gets the benefit of advice, guidance and wisdom of a body of eminent, experienced and patriotic group of individuals drawn from different disciplines and whose loyalty and personal integrity cannot ever be called into question. This in turn will generate the requisite faith and confidence of the citizens of the country in this very important institution on the fair, correct and proper functioning of which alone would eventually depend the safety, the security and the liberty of the people of this country.

5.75 This is only to emphasise that the Intelligence Bureau should not be entitled to act as a super-watchmen over the activities of politicians to whatever party they belong and the activities of the Intelligence Bureau should be subject to regulation and control insofar as these activities concern some of the clandestine parts which have come to the notice of the Commission, to ensure that this does not degenerate into misuse or abuse of authority. In a strict theoretical sense in a democratic country any secret operation of the nature conducted by the Intelligence Bureau, which have come to the notice of the Commission, would be contrary to the democratic norms. The Intelligence Bureau should not be its own judge of its operations with regard to the necessity or the propriety thereof, nor should it be allowed to act as an agency or an instrument of politicians or to degenerate into an institution of controlling the opponents of the political party in power or elements within the party in power with which the controlling authority of the party does not see eye to eye.

5.76 In the present case the watch on a senior Minister of the Cabinet rank and tapping of the telephone of Shri Jagiwan Ram could not be justified. It is somewhat of a mysterious circumstance, that such surveillance should have been maintained and allowed to continue. There is no evidence as to who ordered it, what steps were taken to ensure that the reports emanating from the Bureau were tested and found to

be correct; and what were the safeguards the Government took to prevent and protect itself from acting on incorrect and incomplete information?

5.77 The Water Gate affair and its aftermath in the United States of America led to some very useful improvisations of built-in safeguards for overseeing the activities of that country's Intelligence Agencies.

5.78 The Commission recommends that appropriate safeguards are necessary and should be devised by the Government so as to protect the activities of the Intelligence Bureau being used as an instrument of political spying either by the Government or by someone in the Government. This issue has been raised to concentrate attention and if considered appropriate to generate public debate on the question.

5.79 It is also necessary to invite attention to the misuse of Air Force aircraft. It appears that for the benefit of individuals for travelling on State duty or for State work Indian Air Force aircraft have been used surreptitiously and, according to the existing Rules, those persons were not entitled to the use of the Aircraft. The Commission recommends to the Government the framing of appropriate Rules in this behalf and also to scrutinise whether the use of the Aircraft on June 25, 1975 in the circumstances was warranted and, if not, whether bills for charges appropriate in that behalf were duly tendered and, if not tendered, to identify those responsible for breach of the Rules.

5.80 Attention may also be invited to the gross irregularities to which the provisions of the Maintenance of Internal Security Act and provisions of the Defence of India Rules were misused to the detriment of political opponents. This question will be dealt with at some length hereafter. But it may be sufficient at this stage to observe that the minimum requirements of the provisions of the Maintenance of Internal Security Act and the Defence of India Rules were not complied with, either at the behest of Smt. Indira Gandhi or her aides and orders were made without any grounds, without any satisfaction or maintenance of any record regarding the satisfaction of competent authorities; and personal liberty of many citizens was taken away and they continued to remain deprived of that liberty for substantial periods even in face of the safeguards which were incorporated against misuse of section 16A of MISA which was disregarded with impunity.

5.81 In Delhi and in the States, which had advance information about the promulgation of Emergency, a large number of arrests/detentions followed under MISA in which the safeguards guaranteed against the misuse of the Act were ignored and grounds of detentions were not furnished in a large number of cases and in many cases grounds of detentions were prepared and even pre-dated and sent many days after the persons concerned had been arrested/detained in jails. In a number of cases grounds of detentions had no relevance to the factual positions and in a few cases grounds were fabricated by the police and the Magistrates did not hesitate to sign them. An era of collusion between the police and the Magistracy ensued. In

many cases oral instructions were issued from the State Headquarters for arrests of persons under MISA. In quite a few cases the persons were initially taken into custody under the preventive sections of law and thereafter detained under MISA. This was the device, which appears to have been resorted to in the Union Territory of Delhi shortly after the promulgation of Emergency. A number of persons were arrested on false charges under section 108 or section 151 of the Code of Criminal Procedure or under both these sections. Such persons were produced before the Magistrates and the Magistrates in a number of cases either declined to grant bail or there was delay in effecting the orders of bail and in the meanwhile orders of detentions were procured from the Magistrates, which were passed not infrequently on non-existent or fabricated grounds. The manner in which the provisions of MISA were used was nothing short of perversion and mockery of its provisions and all the safeguards and guarantees that had been promised in the Parliament when the MISA Bill was enacted, were

totally disregarded. Many apprehensions, which were expressed by the Members of Parliament, who spoke against conferment of such wide powers when the Bill was enacted, came true.

5.82 The safeguards enshrined in the enactment were rendered meaningless by the callous misapplication of this Act by the police and the Magistracy, in many cases with the full knowledge and concurrence of some of the State Governments. The use and/or the misuse of this Act raises issues, which requires examination in the larger context. At no time, either normal or abnormal, should there be any possibility of misuse of the powers of arrests. It needs to be made clear to all those responsible for overseeing the correct application of the powers of arrest/detention by the junior officers, that the senior functionaries at the bureaucratic and political levels would be held directly accountable for any misuse or abuse of the powers of arrest and detention.

CHAPTER VI

6.1 The Commission availed itself of the opportunity of going through a large number of files of the Information & Broadcasting Ministry relating to the enunciation of policies on various aspects connected with the management of the different media of the Government during the Emergency. Quite a number of these items also came up for hearing before the Commission and several witnesses made statements before the Commission with regard to the information that was in their possession or the experiences that they personally had undergone as a result of the policy then followed by the Information and Broadcasting Ministry of the Government. The items that have been brought out and which are being reproduced below are based on documents of the Government and statements of the witnesses, both official and non-official.

6.2 The Commission feels that it is necessary to place on record the actual working of the I. & B. Ministry during the Emergency, as a part of the record of the times, in so far as it is reflected in the following pages.

6.3 Having regard to the voluminous nature of the evidence, the Commission has not thought it appropriate to issue any summons under section 8B of the Commissions of Inquiry Act or notice under rule 5(2)(a) of the Commissions of Inquiry Rules to any of the persons figuring in the note. The Commission, therefore, refrains from drawing any adverse inference or making any comments which would affect the reputation of any of the individuals concerned. This is, however, without prejudice to the notices under rule 5(2)(a) and summons under section 8B of the Act issued to Shri V. C. Shukla with regard to the following three cases, which are being dealt with separately :

- (i) Translation of the Congress manifesto;
- (ii) Printing of posters; and
- (iii) Treatment meted out to Shri Kishore Kumar.

6.4 The media policy of the Government was enunciated by the then Prime Minister, Smt. Indira Gandhi at a high level meeting which was held under her Chairmanship on July 26, 1975, which was attended amongst others by the Law Minister, Shri H. R. Gokhale, the I. & B. Minister Shri V. C. Shukla and the Chairman Policy Planning Committee of the Ministry of External Affairs, Shri G. Parthasarathy. At this meeting it had been decided that a law should be made to prevent scurrilous, malicious and mischievous writings in newspapers and journals, that news agencies should be re-structured, that the Government policy regarding issue of advertisements by DAVP should be

reviewed, that the Press Council should be allowed to die a natural death, and a review should be made of all facilities which had been given to Press correspondents by the Government.

6.5 While explaining the reasons for the imposition of Emergency, Smt. Gandhi had said that it was the newspapers which were inciting the people and creating a terrible situation. According to her, the agitation was only in the newspapers and once the newspapers were placed under censorship there was no agitation. Similarly, in a letter which she wrote to Shri Saroj Mukherjee, Member of Parliament, she said that the Press had been fomenting trouble baselessly and had exaggerated rumours.

6.6 Shri B. G. Verghese, former Editor of the 'Hindustan Times', New Delhi, who was examined by the Commission, said that Shri V. C. Shukla in his first meeting with Delhi Editors had told them that no confrontation would be permitted between the Press and the Government and he explained that this meant, the end of dissent and protest. Shri Shukla, has, however, explained that what he meant by the word 'confrontation' was that there should be no fight or quarrel between a free Press and a Government elected by democratic processes.

6.7 The reasons for the measures taken against the media in general and the Press in particular was, according to Shri B. G. Verghese, to keep the public in ignorance and instil fear in them thereby suppressing dissent in every form, individual, political, parliamentary and judicial and that it was used as an instrument of news management aimed at thought control. Shri Raj Mohan Gandhi, Editor of 'Himmat' Bombay has confirmed that censorship was used to eliminate dissent and it vastly exceeded the requirements of the Defence and Internal Security of India Rules. He said that Government achieved this total power to prevent publication of dissent in a round-about manner, because it did not want the stigma of officially imposed pre-censorship. The Government, according to Shri Raj Mohan Gandhi wanted the powers of a dictatorship with the prestige of a democracy Shri Romesh Thapar, Editor of 'Seminar' New Delhi has testified to the atmosphere of fear that surrounded everyone in the profession. Even Editors of national dailies would not speak openly against the steps that the Government had taken against the media.

6.8 This pervasive atmosphere of fear in the media forced many periodicals to close down publication as they could not find any printer to print their copies. Thus, Shri A. D. Gorwala, Editor of 'Opinion', could not find a printer and ultimately he resorted to cyclo-styling his magazine and mailing the issues to individual subscribers. Shri S. M. Joshi of 'Sadhana',

Poona, also had to change his press as the keeper of the press 'Janwani' was issued with a notice as to why his press should not be forfeited for printing 'Sadhana'. Shri Romesh Thapar has also testified as to how the 'Statesman' press refused to print his magazine unless he allowed the 'Statesman's' lawyers to first check the articles.

6.9 The functioning of the media during the Emergency period can be discussed under three main heads :—

- A. Censorship.
- B. Other pressures on the Press.
- C. Functioning of Government Media Units particularly, A.I.R. and Doordarshan.

A. CENSORSHIP

(1) *Imposition of Censorship and disconnection of electricity supply*

6.10 Consequent upon the declaration of Emergency on June 25, 1975, control of the media had become necessary. At the Cabinet meeting held at 8.30 p.m., on June 26, 1975 the Cabinet, while reviewing the Emergency situation agreed with the recommendations of the Ministry of Home Affairs to impose Press Censorship. During the 2 or 3 days when the censorship apparatus was being set up, power supply to the newspaper offices in Delhi remained disrupted. The Government disconnected electricity to the newspaper offices on the night of the June 25, 1975 when Emergency was imposed. Shri B. N. Mehrotra, who was the then General Manager of Delhi Electric Supply Undertaking was given oral orders on the night of June 25, 1975 by the Lt. Governor of Delhi, Shri Krishan Chand that electric supply to the newspaper offices in the city should be disconnected. Though under the provisions of the Electricity Supply Act or the Electricity Act this was not within the competence of the General Manager, Delhi Electric Supply Undertaking, the disconnection was carried out on the basis of certain security reasons that were adduced without any formal orders on that behalf. As some of the newspapers lay outside Bahadurshah Zafar Marg area (the Motherland in Jhandewalan, Hindustan Times and the Statesman in Connaught Place) the electricity to these papers could not be disconnected simultaneously. However, electricity to all newspaper offices on Bahadurshah Zafar Marg was disconnected whereas in other areas disconnection took place only on June 26, 1976. Two or three days later after the censorship apparatus had been set up, electricity supply was restored to all the newspaper offices. According to Shri Krishan Chand, the then Lt. Governor of Delhi, the instructions for disconnecting power supply came during one of a series of meetings at the Prime Minister's House on June 25, 1975, but he was unable to recollect as to who gave the specific orders.

(2) *Rule 48*

6.11 Censorship was imposed under Rule 48 of Defence and Internal Security of India Rules. This Rule gave authority to the Government to censor or

pre-censor matters only in respect of the following subjects :—

- (i) Defence of India;
- (ii) Civil Defence;
- (iii) Public Safety;
- (iv) Maintenance of Public Order; and
- (v) Efficient conduct of Military Operations.

6.12 On June 26, 1975 the Government issued Statutory Order 275(E) under Rule 48, which listed the subjects which came within the scope of pre-censorship. This order was subsequently expanded to include additional subjects.

(3) *Censorship Guidelines*

6.13 In practice, however, censorship was carried on through a set of guidelines issued by the Chief Censor from time to time, both to subordinate offices and to the Press. It is to be noted that it was specifically mentioned that these guidelines were themselves not to be published.

6.14 The first set of guidelines were issued on July 3, 1975 and supplementary guidelines on July 4, 1975. According to Shri H. J. D'Penha, the then Chief Censor to the Government, these guidelines were hurriedly drawn up and were vague and, therefore, a fresh set of guidelines were prepared and issued on July 13, 1975. These guidelines were prepared by Shri K. N. Prasad, Additional Secretary, Information and Broadcasting Ministry and were finalised at a meeting with the then Secretary, I & B Ministry, Shri A. J. Kidwai and Shri H. J. D'Penha. These guidelines were approved by the Minister, Shri Vidya Charan Shukla. These guidelines exceeded the scope of the Rule 48 of the Defence and Internal Security of India Rules insofar as they prevented Editors leaving editorial columns blank or filling them with quotations from great works of literature or from national leaders like Mahatma Gandhi or Rabindra Nath Tagore or conveying disapproval of the Government's measures undermining public confidence in national credit or any Government loan. The Information and Broadcasting Ministry did not attempt to find out whether these guidelines were within the scope of the Defence and Internal Security of India Rules or not. According to Shri H. J. D'Penha, a suggestion had been made by him that the approval of the Law Ministry should be obtained for these guidelines so that they would be in conformity with Statutory order 275(E). The Minister had, however, instructed that in case these guidelines were challenged in court, appropriate action could then be taken. Shri Shukla during his testimony before the Commission said that these were not intended to have any statutory force and that these guidelines were devised merely to assist the editors, and therefore, no action was taken to find out whether they were in consonance with the law on the subject. Merely disobeying the guidelines would not have warranted any action against the newspaper concerned.

6.15 However, this contention of Shri Shukla that the guidelines did not have any force of law, and that disobeying them would not warrant action, does not appear to be correct. Counsel for the Union Government and for the Chief Censor had in the 'Bhoomiputra' case before the Gujarat High Court himself relied upon these guidelines in support of the impugned order of censorship on 'Bhoomiputra'. The Gujarat High Court, however, held that these guidelines were illegal and inoperative. The Gujarat High Court also said that after Rule 48 had been made, the Central Government and the Chief Censor had gone stride after stride beyond the scope of Rule 48.

6.16 Similarly, in the Binod Rao's case, the Bombay High Court held that under the censorship orders, the Chief Censor could not possibly issue instructions in the guise of directions which go beyond the scope of censorship.

(4) Censorship of Parliament and Court Proceedings

6.17 Parliamentary and Court proceedings were also subject to censorship. The guidelines issued on July 13, 1975 had stated that censorship would apply to the publication of some news etc. relating to the proceedings of Parliament and of Legislative Assemblies. The guidelines *inter alia* stated that statements made on behalf of the Government could be published either in full or in a condensed form but its contents should not infringe censorship. Nothing else was allowed to be published except the names and party affiliation of the Members speaking on a subject in support or against the subject. The result of voting could be factually reported.

6.18 Supplementary guidelines for Parliament coverage for the Censor were issued on 22-7-1975. These guidelines *inter alia* laid down that (a) movement of Members within the House should not be reported, e.g., ruling party Members moving to the opposition benches or *vice-versa*, (b) remarks from the Chair in either House should not be allowed as a part of the proceedings of the House, (c) reference to some of the empty seats in the Opposition Benches should not be allowed, (d) names of Members who were absent was also not allowed.

6.19 Following a meeting held at the residence of Shri K. Raghuramiah, Minister for Parliamentary Affairs on December 13, 1975, which was attended amongst others by Shri V. C. Shukla, Minister for Information & Broadcasting, Shri Om Mehta, Minister in the Ministry of Home Affairs, Shri S. N. Banerjee, Secretary General, Rajya Sabha and Shri M. L. Shakh-dhar, Secretary General, Lok Sabha, it was decided to impose mandatory pre-censorship on all newspapers and agencies in regard to news, comments, rumours or other reports relating to the Lok Sabha and Rajya Sabha Sessions which were to be held in January 1976. The guidelines issued on January 4, 1976 to the Censors for covering the proceedings of the Parliament clearly laid down that news, reports, comments relating to the proceedings of the Parliament, would be governed by Rule 48 of the Defence and Internal Security of India Rules and, therefore, the publication of news regarding Parliament had to be cleared by the

Censor Officer before it could be published. A long series of 'dos' and 'dents' had been given in these guidelines, but they were all subject to the final proviso that any report or news which was violative of censorship rules in force at that time would not be permitted.

6.20 From the January Session of Parliament, a Censor Room started functioning from Room No. 64, 1st Floor, Parliament House. Censors worked there in two shifts from 10.30 a.m. to 3 p.m. and 3 p.m. to 10.00 p.m. It was also decided that there would be no name board affixed on the door to show that it was the Censor Room.

6.21 On January 14, 1976 all news etc., relating to questions and answers, statements and discussions on censorship in Parliament were expressly disallowed from publication. On 7th March, 1976 fresh guidelines were issued for Parliament. These guidelines said that the image of Parliament as the voice of the people and as a sovereign body should not be allowed to be impaired but all news etc., relating to the proceedings of the Parliament were to be governed by Rule 48 of Defence and Internal Security of India Rules.

6.22 As regards courts of law, guidelines were issued to the press which said that while publishing news, comments or reports relating to proceedings in a Court of Law only the operative part of the judgment was to be published in appropriate language and nothing should be published which would infringe censorship laws. During the course of his testimony, Shri H.J.D'Penha, Chief Censor said that publication of Court judgments were censored under the instruction of the Ministry of Home Affairs after consultation with the Law Ministry. When it was pointed out to him that in the 'Bhoomiputra' case, where the High Court had ordered that judgment should not be censored and yet he had issued instructions to all newspapers that the judgment should not be published, he said that it was not a censorship order but merely 'public relations' advice.

6.23 Not merely the publications of court judgments were censored but directions were also given as to how particular judgments should be published. In Smt. Indira Gandhi's appeal to the Supreme Court, in her election petition case, a series of directions were issued by the Chief Censor on what aspects of the case should be given publicity and what aspects of the case should not be played up at all. When the judgment was delivered in this case, instructions went to all newspapers to play up the fact that Smt. Indira Gandhi's appeal had been upheld and that the cross appeal of Shri Raj Narain dismissed.

6.24 According to Shri H. J. D'Penha this was done on the instructions of the Ministry of Information & Broadcasting. Shri D'Penha admitted to issuing a number of instructions regarding how judgments of Supreme Court and other Courts should be carried by newspapers and said that these had been done under the instructions of superior authorities.

6.25 Shri V. C. Shukla, Minister for Information & Broadcasting said that any instructions that he had issued regarding publication of High Court judgments were subject to law. According to Shri Shukla no officer of the Ministry was expected to flout the law in any matter or go against the directions of the Courts.

(5) *Transfer of Powers to administer Rule 48, DISIR from Ministry of Home Affairs to Ministry of Information and Broadcasting*

6.26 When censorship was originally imposed, the powers under Rule 48 of Defence and Internal Security of India Rules were with the Ministry of Home Affairs though the actual functioning of the censorship machinery was under the Ministry of Information and Broadcasting. The Ministry of Home Affairs frequently expressed its unhappiness at the short notice which was generally given and the scanty material which was supplied by the Information & Broadcasting Ministry when it requested the Ministry of Home Affairs to issue pre-censorship orders.

6.27 Thus when the 'seminar' Magazine was placed under pre-censorship, the Information & Broadcasting Ministry sent a note which did not even contain relevant extracts of the publication which were considered prejudicial. Sufficient time or opportunity was not given to the Ministry of Home Affairs to consider the case. On the other hand the Information & Broadcasting Ministry expected that orders would be issued immediately. At a meeting held by the Information & Broadcasting Minister, Shri V. C. Shukla, on July 15, 1976 with Shri R. L. Mishra, Joint Secretary (IS), Ministry of Home Affairs, Shri Shukla expressed the view that there was a convention that once a case had been cleared at his level and he had taken a decision, no further examination should take place in the Ministry of Home Affairs. At that time a decision was taken at the Home Minister's level that while the Ministry of Home Affairs would process cases expeditiously, the I & B Ministry would supply full material on which the Ministry of Home Affairs could then exercise its own judgment.

6.28 Subsequently the Information & Broadcasting Ministry again on August 21, 1976 asked for pre-censorship orders under Rule 48(1) to be issued to Indian Express. Again no reasons were adduced. As the Information & Broadcasting Ministry was insistent, the Home Minister's orders were obtained on telephone and pre-censorship orders issued. Seeing the reluctance of the I & B Ministry to furnish details and requisite material to the Ministry of Home Affairs it was decided by the Home Minister that all powers under Rule 48 should be transferred to the Ministry of Information and Broadcasting.

(6) *Day-to-day operation of censorship*

6.29 The actual work of censorship on day-to-day basis went even beyond the scope of the guidelines. Orders were arbitrary in nature, capricious and were

usually issued orally without any relation to the provisions of Rule 48. Issuing of oral orders had been expressly forbidden by the Chief Censor in the guidelines which he had issued on July 13, 1975. Shri H. J. D'Penha has said that in view of the time schedule involved and the round-the-clock working of daily newspapers and agencies, reducing orders into writing would have defeated the very purpose of censorship and hence from almost the very beginning directions on subjects to be censored were issued orally. Shri D'Penha has also said that he himself used to receive such orders from various authorities in the Information & Broadcasting Ministry and in other Ministries and these orders were very seldom reduced into writing. Most of these instructions have been recorded in a Log Book (4 volumes) maintained by the Duty Room of the Censor Department. A few representative illustrations from the Censors Log Books are reproduced below :—

- (1) 'No story is to be cleared pertaining to Parliament business or Supreme Court appeal filed by Prime Minister. No reference to the case' (12th July, 1975)
- (2) 'As per instructions..... only the date fixed for hearing of PM's appeal is to be given. Lawyers' name may be given.... no names of judges are to be given' (14th July, 1975)
- (3) 'Reports on proceedings in the Verghese V/s Birla case should be reduced to the minimum and should be very brief'. The arguments need not be mentioned. If they are allowed, should not be more than a para or two' (22nd July, 1975)
- (4) 'There has been a 'bundh' in Ahmedabad, organised by the ruling party (Janta Front). If the agencies and the correspondents' copies say that the 'bundh was a flop' it may be allowed, provided the description of the 'bundh' does not go against Censor instructions'.
- (5) 'Any statement made by the Chief Minister, Gujarat, criticising any action taken by the Centre should be spiked, but if his statement is innocuous it may be allowed. In case of any doubt, please ring up Additional Chief Censor, Shri U. C. Tiwari' (26th July, 1975)
- (6) 'No reports, comments (including editorial) articles, statement or news on bonus to employees shall be allowed until further instructions from us' (4th September, 1975)
- (7) (i) No adverse criticism of the Ordinance on Bonus by Trade Unions in Public Sector Organisations is to be allowed;
- (ii) Editorial comments on bonus are permissible;

- (iii) These comments should be within the official explanation on the bonus issue and should not support an agitational approach; and
- (iv) That these comments are subject to pre-censorship.
 - (a) Teleprinter message to all the State Censors has been sent on the above lines, with the following additions :—

'words like 'shock', 'deplore' or 'ill-advice' should be altered to 'disappointed' or 'surprise'. (26th September, 1975).
- (8) 'Please ensure that Allahabad High Court judgment today upholding MISA detainees' right to move High Court under Article 226 is not published in the State. Instruct your Censor in Allahabad to kill story' (30th October, 1975)
- (9) 'As required, the official version of J. P.'s release with instructions not to give prominence to the news and not to use photographs was communicated to agencies and local papers.....' (13th November, 1975)
- (10) 'KMLP (Gujarat) has been dissolved. There is likelihood of some members issuing statements withdrawing support to the Janta Front Government in Gujarat. Such statements *should be allowed*. Statements pledging support to the Janata Front Government by some of the members should be spiked' (Instruction CC) 11th February, 1976)
- (11) 'All the statements made by the Janta Front Leaders alleging that Centre or Congress was out to topple their Ministry or that Janta Front would take to agitation etc., should not be allowed. The statement of KMLP leaders dissolving their party, in support of the Janta Front are also not to be allowed. Anything which is unhelpful to the present plan of the Centre should be killed' (15th February, 1976)
- (12) 'As desired by JCC(P) all the local dailies and news agencies were informed that Shri Tulmohan Ram's case should be sent to us for pre-censorship. All references to Shri L. N. Mishra, Shri Chattopadhyaya and Shri N. K. Singh are to be deleted' (5th March, 1976)
- (13) 'About mid-day today the office of 'Veekshanam' daily (Cochin) was searched by the police for reasons not known. This daily newspaper is run by the Kerala Pradesh Congress Committee. Some of the newspapers which referred a story on this to me were advised not to carry anything for the time being.....'

N.B.—This development assumes more importance in view of the widening rift within the Congress Party in the State. The section which is rallying behind the PCC President, who publishes the daily is very sore about the police search. The Police portfolio is held by the Congress Minister, Shri Karunakaran who is identified with the rival section in the party.
(This incident is likely to precipitate further) (22nd April, 1976).

- (14) 'State Censors have been advised not to permit any comments or references about the transfer of High Court judges' (1st June, 1976)

6.30 In practice censorship was utilised for suppressing news unfavourable to the Government, to play up news favourable to the Government and to suppress news unfavourable to the supporters of the Congress Party. During his statement before the Commission Shri D'Penha admitted that this was done under the instructions of the Ministers/Ministry. He also said that various items of news referring to factionalism in the Congress Party were also censored on instructions—but he has not said whose instructions these were. Shri Shukla has said that he had not given any instructions regarding factionalism in Congress Party or to censor adverse or critical comments on the Youth Congress.

6.31 However, in one instance at least, that of the magazine 'Mainstream' pre-censorship orders were issued largely because of its critical attitude towards Shri Sanjay Gandhi, Shri Nikhil Chakravarty, Editor 'Mainstream' told the Commission that Shri Shukla had called him and told him that Shri Sanjay Gandhi was a national leader and hence articles criticising him would not be permitted. Shri Chakravarty was asked to give an assurance that he would refrain from criticising Shri Sanjay Gandhi, an assurance which he refused to give. Subsequently the 'Mainstream', was placed under pre-censorship because it had criticised Shri Sanjay Gandhi and also because it had critically commented on the toppling of Chief Ministers who did not enjoy the favour of a particular coterie at the Centre. Shri Shukla has, however, stated that he had merely advised Shri Chakravarty with the best of intentions and any action against Shri Chakravarty and 'Mainstream' that followed had nothing to do with the acceptance or otherwise of his advice.

6.32 The capriciousness of the Censor authorities and their arbitrariness has been commented upon by a number of Editors. Shri Cho Ramaswamy, Editor 'Tughlak', gave a number of examples of how jokes, cartoons, and satirical articles in his magazine were all subjected to censorship without their being even remotely concerned with the Defence and Internal Security of India Rules and Statutory Orders made thereunder. Thus even birthday greetings to Shri Morarji Desai on the latter's birthday which was sought to be published in the 'Tughlak' was completely censored. Even quotations from statements made

by Smt. Indira Gandhi were taken objection to by the Censor. Shri Ramaswamy disclosed how he was asked to submit articles and sometimes whole issues of his magazines for pre-censorship because the issue of 'Tughlak' dated July 15, 1976 carried (i) editorial excerpts from Nehru (ii) letters from readers (iii) quotations from speeches of Indira Gandhi (iv) quotations from Hitler (v) quotations from Mussolini (vi) passages from state play 'Tughlak' all of which were held objectionable by the Censor.

6.33 Shri Nikhil Chakravarty has related how Shri Shukla objected to quotations from Tagore, Mahatma Gandhi etc., and said that they could not be used. Shri A. D. Gorwala, Editor of the 'Opinion' had included quotations from the Gita in his magazine and the whole quotation was censored. Even speeches made in Parliament—Lok Sabha, which had been published with the permission of the Speaker of the House and were available for sale at Rs. 2 were not permitted to be published by the Censor in Shri Gorwala's 'Opinion' magazine. Shri Gorwala further stated that when censorship came, it struck him that the only purpose a paper like his could serve would be to try and encourage the spirit of freedom and that is why he continued publishing and in his first issue brought out a series of quotations on liberty. This was struck down by the Censor; after that if there was even a word 'liberty' or 'freedom' or any reflection about democracy it would be struck out.

6.34 Shri S. M. Joshi, Editor of 'Sadhana' while corroborating Shri Gorwala, Shri Chakravarty and Shri Ramaswamy about how the Censor took objection to his publication of quotations from Mahatma Gandhi and other eminent persons, said that the objective of the Government was to see that everybody was silenced and in respect of censorship the question of law did not exist.

6.34A Shri Shukla said that the reasons why quotations were disallowed were that these quotations which were made with reference to the British Raj were now taken out of context, would create misunderstandings and therefore they should be avoided.

6.35 Newspapers were not even allowed to keep the editorial columns blank. According to Shri Shukla if the editorial space was left blank this signified protest and according to the policy of the Government it was not proposed to allow any protest to be signified in that manner. He further clarified that space kept blank in a newspaper was a protest against the emergency. Therefore, it was unlawful and therefore, the Government was entitled to say that it should not be left blank. Both Shri Raj Mohan Gandhi and Shri Nikhil Chakravarty felt that Government's objection to editors leaving space blank in the newspapers was because they wanted to give an impression that there was no censorship in the country.

6.36 According to Shri Chakravarty this was an attempt at self-deception on the part of the Government whereas Shri Rajmohan Gandhi felt that according to the Censor blank space signified disapproval of

Governmental policies. Since the Government also wanted favourable articles, one way of forcing journals to carry such stories was by not allowing them to keep spaces blank.

7. Censorship during Elections

6.37 When elections were announced on 18th January, 1977, censorship was relaxed and censorship laws were held in abeyance. Even then an effort was made to maintain control over the activities of the press. The Government tried to pressurise the press by giving informally 'off the record' warnings by veiled threats of what would happen to them after the elections if they did not comply with the directions of the Government, by asking that certain articles should be published and by enforcing the Code of Ethics.

6.38 According to Shri Girilal Jain, Editor of 'Times of India', Smt. Gandhi tried to persuade the editors to constitute a supervisory committee to oversee the working of the press. To do this a Code of Ethics was drafted by the officials of the Ministry; journalists had very little to do with it, and had not accepted it as the Code of Ethics was quite restrictive.

6.39 Shri Nikhil Chakravarty in his testimony has explained how the Code of Ethics was passed in the absence of veteran and senior journalists, who were the members of the Committee of Editors and who had tabled a large number of amendments to this Code, which had been drafted by I&B Ministry officials. Subsequently Shri Shukla got the All India Newspaper Editors Conference also to approve of this Code. According to Shri Chakravarty, Shri Shukla wanted to have the Code of Ethics made into a law but the Cabinet opposed it. According to Shri Chakravarty and Shri H. Karlekar, Editor of 'Hindustan Times', none of the journalists or their organisations had accepted the Code.

6.40 Shri L. Dayal, Principal Information Officer to the Government of India admitted that there was opposition from the journalists to the Code of Ethics because its origin and source were tainted. Shri V. C. Shukla, the then Minister for Information and Broadcasting while tracing the history of the evolution of the Code of Ethics said that the suggestion for putting into practice this Code came from the members of the Central Committee of Editors. This Central Committee of Editors was nominated by the Government of India and was supposed to be a representative body. Shri Shukla admitted that the Code of Ethics was approved by the Editors at a meeting in Calcutta where some of the Editors who had suggested amendments could not be present. Shri Shukla emphasised that this Code was accepted by most of the professional bodies of the industry and that nobody made any serious objection to this Code.

6.41 Shri S. Sahai, Editor, Statesman and Shri Ajit Bhattacharya, Deputy Chief Editor of the Indian Express told the Commission how during the elections they were given informal warnings by Shri

L. Dayal, the Principal Information Officer and Shri H. J. D'Penha, Chief Censor respectively regarding the type of articles and stories that were appearing in their papers. Shri Bhattacharya also said that Shri K. N. Prasad, Additional Secretary, Information and Broadcasting Ministry had also informed Shri R. K. Mishra, General Manager of the 'Indian Express' about the stories they were carrying about the atrocities committed during the family planning campaign at Rewasa and Pipali. Shri L. Dayal confirmed that the Government was angry with 'Indian Express' and the 'Statesman'; Shri Shukla had told him that as the 'Statesman' was likely to be partisan he had been told to talk to Shri Sahai and convey the Minister's impression to him.

6.42 Shri K. N. Prasad, Additional Secretary, Information and Broadcasting Ministry also admitted having conveyed to Shri R. K. Mishra, General Manager, 'Indian Express' the Government's views that the publication of the article concerning atrocities committed during the family planning programme at Pipali village would inflame passions when the election campaign was picking up momentum. He also admitted that family planning was a very important issue in the election campaign and that certain parties had alleged that excesses had been committed by the Government in the family planning programme. He denied, however, that he was motivated by any desire to assist the Congress Party's election campaign.

6.43 Shri H. Karlekar of the 'Hindustan Times' also told the Commission how Shri L. Dayal, P.I.O. and Shri K. N. Prasad, Additional Secretary, made insistent efforts to persuade him to publish an article by Prof. Rashiduddin Khan, whose main theme, according to Shri Karlekar, was that the Congress Party was the one best suited to come to power. Both Shri Dayal and Shri Prasad admitted to speaking to Shri Karlekar about this article. They have both denied that any pressure was exerted on Shri Karlekar, and both have also said that they did not read the article which they were pressing Shri Karlekar to publish.

6.44 The Additional Secretary, Shri K. N. Prasad, and Chief Censor Shri D'Penha were also instructed to keep a watch over the trend and tenor of the press and to see how they were behaving after relaxation of the censorship laws. According to Shri L. Dayal this was done with a view to taking possible action against such papers after the elections were over. A daily press round up was prepared which analysed the contents of each newspaper and this analysis was sent amongst others to the Minister of I & B and to the Prime Minister's Secretariat.

6.45 During the period of emergency, legislation was also enacted to make censorship part of the ordinary law of the land. Thus the Prevention of Publication of Objectionable Matter Act was passed, the Press Council of India was abolished by an ordinance and a bill repealing the Parliamentary Proceedings (Protection of Publication) Act, 1956 was passed. According to Shri B. G. Verghese, former Editor of 'Hindustan Times', the purpose of this legislation was to institutionalise the emergency.

B. OTHER PRESSURES ON THE PRESS

1. Directorate of Advertisement and Visual Publicity (DAVP)

6.46 The Directorate of Advertisement and Visual Publicity (DAVP) is the sole advertising agency for the Government. A number of public sector undertakings also use it for advertising purposes. The advertisement policy of the Government had been enunciated in Parliament from time to time by Ministry of Information and Broadcasting. This policy had provided that there would be no discrimination on political ground for placement of Government advertisements. But newspapers which indulged in virulent propaganda, inciting communal passion or offending socially accepted conventions of decency or morality were not to be used for advertisements. The distribution of advertisements to newspapers was to be balanced and equitable but it was not intended to be a kind of financial assistance to newspapers.

6.47 The Government of India had decided to review its advertisement policy at a high-level meeting held in the room of Smt. Indira Gandhi, the then Prime Minister on 26th July, 1975 which was also attended by Shri V. C. Shukla amongst others. Even before this, Shri Shukla at a Coordination Committee Meeting held on 29th June, 1976 had asked the Principal Information Officer to prepare a list of newspapers which were to be categorised as friendly, neutral and hostile.

6.48 According to Dr. A. R. Baji, who was the Principal Information Officer, the categorisation originally was done on the basis of the news and comments appearing in newspapers prior to the declaration of emergency and soon after it. Subsequently a narrower study was done on the views reflected in the editorial columns of newspapers between June 12 to June 26, 1975. The list was first scrutinised by Shri Shukla and was then finalised at a meeting in Shri K. N. Prasad, Additional Secretary's room and overall rating given to the newspapers, keeping in view its attitude. The master copy of this list was kept in the personal custody of Shri K. N. Prasad. According to Dr. Baji, the list was drawn up purely on the basis of the attitude of newspapers towards political developments and of their proprietorial affiliations to political parties. The grading of friendly, neutral and hostile given to a particular newspaper was related to its views on a particular political party. According to Shri K. N. Prasad this grading had nothing to do with any political party but was purely in response to its attitude towards the Government.

6.49 A note of Dr. A. R. Baji in the file gives an index for categorisation of newspapers which is as follows:

A Friendly	B Hostile	C Neutral
A+Positively friendly	B+Continuously hostile	C+Shift from neutral position towards positive side
A—Friendly but with some reservations	B—Less hostile than before	C—Shift from neutral position towards hostile attitude

Some of the newspapers in the 'A + list' are:—

1. Natun Assamiya, Assamese, Assam.
2. Amrita Bazar Patrika, English, West Bengal.
3. Nagrika, Bengali, Tripura.
4. Indian Nation, English, Bihar.
5. Hindu, English, Tamil Nadu.
6. Naveen Duniya, Hindi, M. P.
7. Hindustan, Hindi, Delhi.
8. Malayala Manorama, Malayalam, Kerala.
9. Lokmanya, Marathi, Maharashtra.
10. Khaollo, Manipuri, Manipur.

In C and C— categories are:—

1. Dacca Chronical, English, A. P.
2. Searchlight, English, Bihar.
3. Financial Express, English, Maharashtra.
4. Pioneer, English, U. P.
5. Gujarat Samachar, Gujarati, Gujarat.
6. Navbharat, Hindi, M. P.
7. Rajasthan Patrika, Hindi, Rajasthan.
8. Nav Bharat & Praja Vani, Kannada, Karnataka.
9. Light, Malayalam, Kerala.
10. Suraj, Punjabi, Punjab.
11. Dina Madar, Tamil, Tamil Nadu.
12. Andhra Bhoomi, Telugu, Andhra Pradesh.
13. Chinara, Urdu, J&K.
14. Mehanat, Urdu, Punjab.

In B + category are:—

1. Danik Asom, Assamese, Assam.
2. Danik Sambad, Bengali, Tripura.
3. Poona Daily News, English, Maharashtra.
4. Indian Express, English, Tamil Nadu.
5. Sandesh, Gujarati, Gujarat.
6. Pradeep, Hindi, Bihar.
7. Vir Pratap, Hindi, Punjab.
8. Deshabhimani, Malayalam, Kerala.
9. Swadesh, Hindi, M. P.
10. Kannada Prabha, Kannada, Karnataka.
11. Navabharat, Marathi, Maharashtra.

6.50 This is only a representative list and there were a large number of newspapers and other journals in virtually all languages which were categorised as B or B +.

6.51 Of the national dailies published in English from Delhi; the 'Hindustan Times' and 'Times of India' were given A and A-grading and 'Statesman' and 'Indian Express' B grading respectively.

6.52 According to Shri S.M.H. Burney, who was Secretary in the Ministry of Information and Broadcasting these lists were prepared on the basis of instructions received from the Minister. These were oral orders of the Minister, and he communicated them in writing to Shri K. N. Prasad, who subsequently got the lists prepared. The list of newspapers and magazines was to be of those who were in favour of the Government and also of those who were anti-Government and anti-Prime Minister. Shri Burney admitted that he did not know the kind of assessment made by the P.I.O., but he was clear that it meant opposing the Government and not the Congress Party, though he could give no idea as to the nature of the criticism of the Government as distinguished from that of the party.

6.53 Shri V. C. Shukla while admitting that he had given directions for preparation of these lists said that the attitude of the newspapers was to be adjudged in the light of their general cooperation with the Government. According to him, Dr. Baji's understanding of the task entrusted to him was wrong and Government merely intended to judge a newspaper's cooperation from the background of its attitude towards the Government and particularly of the adjustment that it had made during the emergency.

6.54 However, from the evidence which is available on the files of the DAVP it is evident that political considerations was one of the criteria for giving advertisements. Thus 'Dastan-e-Watan' which is an Urdu Journal published from Delhi had its advertisements resumed after notice had been taken by Shri K. N. Prasad and Shri V. C. Shukla that this journal had ceased to follow a pro-Jana Sangh policy and was now supporting the Congress.

6.55 Similarly in the case of 'Lok Raj' of Bhavnagar, Gujarat, advertisements were stopped when a complaint was received that this publication was supporting Congress (O) policies. Subsequently an inquiry was made through the PIB and during the course of this inquiry it was found that it was a pro-Congress paper, and Shri Shukla ordered resumption of advertisements to this journal on 15th May, 1976.

6.56 'Alai Osai' a Tamil Daily was being used on a restricted basis by the DAVP because it was allegedly Pro-DMK. In February 1976 Shri M. Bhaktavatsalam requested Shri V. C. Shukla that 'Alai Osai' should be given more advertisements. Accordingly the number of advertisements to this daily was stepped up. In April 1976, however, on receipt of a complaint from Shri V. Vishwanathan, M.P., that the 'Alai Osai' was staunchly pro-DMK, the issue of advertisements to this daily was stopped. In October 1976 on receipt of a letter from Shri E.V.K. Sampath, Vice-President

of the Tamil Nadu Congress Committee that some Congressmen had purchased this daily, advertisements to this daily were resumed. A number of official weeklies of the Congress Party were given extensive advertisement support, while that to official journals of the opposition came down. The following table illustrates the amount of advertising support given to Congress Party journals *vis-a-vis* some of the opposition party journals :

Name of the Party	Name of the Journal	Period	Circulation	Expenditure (Rs.)
1. Congress Party	1. Socialist India	1974-75	1881	3,188
		1975-76	1062	18,647
		1976-77	3521	1,11,740
	2. Socialist Bharat	1974-75	—	—
		1975-76	3660	14,918
		1976-77	2902	1,05,236
	3. Sab Saath	1974-75	2400	2,718
		1975-76	1443	6,555
		1976-77	1443	52,623
2. Communist Party of India	1. New Age	1974-75	12,783	3,668
		1975-76	12,340	21,250
		1976-77	14,496	11,106
	2. Hayat	1974-75	1866	736
		1975-76	1883	3,366
		1976-77	1883	2,879
3. Communist Party of India (Marxist)	1. Ganashakti	1974-75	12,891	17,957
		1975-76	12,891	11,442
		1976-77	Not used	1,524
		between 1-2-76 to 23-3-77		
4. Bhartiya Jana Sangha	1. Mother Land	1974-75	14,335	13,728
		1975-76	Publication ceased	
		1976-77		
5. Praja Socialist Party	1. Janata	1974-75	1477	450
		1975-76	1587	98
		1976-77	Not used	—

6.57 Thus it is apparent that contrary to the policy enunciated by the Government on the Floor of Parliament, political considerations were taken into account while releasing advertisements.

6.58 The Government during this period utilised its advertising policy as a source of financial assistance or denial of financial assistance to newspapers etc. in complete variance with the policy which it had enunciated on the Floor of the Parliament. Newspapers and journals which were critical of the Government's policies were denied advertisements whereas others like Amrita Bazar Patrika and National Herald which were regarded as being supporters of Government policies were given advertisements beyond their legitimate due.

6.59 Thus according to Shri Romesh Thapar, Air India stopped giving advertisements to 'Seminar' magazine as soon as the order of pre-censorship was issued on 'Seminar' for some articles containing allegedly objectionable material. Soon after a private sector firm told Shri Thapar that its management had received messages that advertisements should not be released to 'Seminar'.

6.60 Shri Rajmohan Gandhi has also stated that soon after the Government started taking adverse notice of 'Himmat' magazine all advertisements from DAVP and other Government agencies like Banks and Airlines were stopped. When Shri Rajmohan Gandhi inquired from Air India, the Bank of Maharashtra and Dena Bank as to why his advertisements had been stopped, he was told that the Government had placed him on the prescribed list.

6.61 On the other hand, Amrita Bazar Patrika was categorised as A plus (meaning positively friendly) according to Dr. A. R. Baji, in the list of 'friendly, hostile and neutral' newspapers. Dr. Baji told the Commission that A plus, positively friendly, grading was given to those newspapers which went all out to support the party in power or the Government. To use Dr. Baji's phrase, they were 'whole-hoggers'. Amrita Bazar Patrika was given a mid-term revision of rates by Shri V. C. Shukla w.e.f. 9th October, 1975. According to Shri Shukla this was done on the specific recommendation of DAVP. The DAVP (Shri Sethi) has noted on the file in October 1975 that Amrita Bazar Patrika had asked for a higher rate. In August, 1975 the DAVP had recommended that Amrita Bazar Patrika should be given the same rate as that of the 'Hindustan Times' as the circulation of combined edition was the same as the 'Hindustan Times'. When the DAVP made a note on the file he also said that the circulation of Amrita Bazar Patrika had come down by 5,000 copies since its recommendation of August, 1975 and that normally upward revision of rates is not agreed to unless there is a corresponding increase in circulation. The quantum of advertisement released to this newspaper in 1975-76 was Rs. 9,22,313 as against Rs. 4,57,340 in 1974-75. In 1976-77, the quantum of advertisements showed a further increase to Rs. 10,10,696. Shri V. C. Shukla told the Commission that he regarded the request of Amrita Bazar Patrika for increase in quantity of advertisements as a 'claim' on the Government. He also said that it was supporting nationalistic policies.

6.62 Similarly, National Herald was given an A plus rating and quantum of advertisement given to the National Herald Delhi Edition alone is indicated in the following table :—

	1974-75	1975-76	1976-77
Circulation	11,048	10,880	10,831
Amount (Rs.)	17,298	66,327	1,32,917

6.63 For all editions of National Herald the figures regarding quantum of advertisements are as follows :

1974-75	Rs. 2,51,304
1975-76	Rs. 4,99,589
1976-77	Rs. 8,70,555

6.64 According to Shri Shukla the Government had laid down certain criteria and they tried to apply them as fairly as possible and to the best of its ability. Shri Shukla also did not comment on individual cases and said that Commission could

come to its own conclusions from the record. He also said that they may have applied the guidelines wrongly and, therefore, erred.

6.65 On 15th September, 1976, a policy note was issued by Shri K. N. Prasad, Additional Secretary, which he said was issued after consulting the Minister Shri V. C. Shukla. The policy note authorised the DAVP to canalise advertisements of all Central Government Ministries, Departments, Public Sector Undertakings and nationalised autonomous bodies. It was realised that the State Governments may not agree to have their advertisements canalised through the DAVP but it was noticed that the Centre could advise them to discontinue advertisements to delisted newspapers. The DAVP was also directed to ensure that whenever any paper was delisted, the publication of those advertisements which had already been released should be prevented. The DAVP was also asked to tactfully explore the possibility of private advertising agencies denying advertisements to delisted newspapers. Shri Prasad could not explain the basis on which the listing or delisting was done by the DAVP. He also admitted that he did not make any inquiry from the DAVP whether declaration made on the Floor of the Parliament by the Government was being violated either in words or in spirit when he made this recommendation.

6.66 Regarding the possibility of private advertising agencies denying advertisements to delisted newspapers. Shri Prasad said that the DAVP failed to persuade the private agencies to fall in line and, therefore, Shri Shukla himself met the representatives on 5th February, 1977. The minutes of this meeting which was held on February 5, 1977 reveal that private advertising agencies agreed to fall in line with the Government's policies on release of advertisements.

6.67 From the above it is evident that the Government's assurance on the Floor of the Parliament that political affiliations would not be taken into consideration while giving advertisements and the advertisements would not be regarded as source of revenue or financial assistance to newspapers, were both disregarded in the actual implementation of the policy. The liberal grant of advertisements to so-called friendly periodicals raised the total expenditure of DAVP advertisements on newspapers from Rs. 1,42,30,238 in 1974-75 to Rs. 2,20,68,897 in 1975-76 to Rs. 2,79,45,942 in 1976-77. During the same period 89 newspapers and periodicals were denied advertisements mostly on political grounds for varying lengths of time.

2. Formation and Functioning of 'Samachar'

6.68 The first indication that the Government was intending to reorganise the existing four news agencies, namely, U.N.I., P.T.I., Hindustan Samachar and Samachar Bharati was apparent at Smt. Indira Gandhi's high-level meeting of 26th July, 1975. Subsequently at another high-level meeting held by Smt. Gandhi on August 12, 1975 which was also

attended by Shri V. C. Shukla, Minister for I&B, the pros and cons of restructuring the news agencies into a statutory body or trust were considered. Accordingly the Ministry drew up an ordinance for approval of the Cabinet for merging the news agencies into a single statutory body. The Cabinet did not accept the ordinance and decided that the agencies should be made to merge without recourse to law and other methods should be tried.

6.69 According to Shri L. Dayal, who was the P.I.O., Shri Shukla interpreted the expression 'other methods' to mean that pressure would be put on the news agencies by way of All India Radio no longer subscribing to the news agencies, by not hiring teleprinters of the news agencies and vigorous recoveries of the dues of the Government. According to Shri Dayal the inference could be drawn from subsequent events that the intention of having these news agencies merged into one unit was to control their functioning and that decisions regarding this merger was taken at the Prime Minister's level. According to Shri Shukla no decisions were taken in the Prime Minister's meeting but the discussions held there helped them to clarify their minds as to what should be the best form to achieve the objective. According to him he had understood the Cabinet's decision to try 'other methods' to mean persuasion, mobilisation of public opinion, opinion of professional bodies, opinion in Parliament and opinion of the workers of the news agencies.

6.70 He also said that it was purely coincidental that the teleprinter connections to Government offices were disconnected when discussions regarding merger were going on. He also said that Government showed indulgence to the agencies in not recovering the dues of the P&T Department because of their tight financial position. He said this indulgence was a form of patronage and when they decided that there would be no more patronage the P&T Department started realising its dues. He, however, did not know the exact terms of the agreement between the agencies and the P&T Department.

6.71 As regards AIR dues, Shri Shukla said that the agreement with the agencies had expired. A new agreement was negotiated and the terms settled. The agreement was, however, not signed and whatever payments were made, were made on an *ad hoc* basis. Considering that the ways and means position of the agencies was bad, a payment of Rs. 5 lac was made to them on a purely *ad hoc* basis.

6.72 Shri Mirchandani, Editor and General Manager of U.N.I. said that the rejection of the ordinance was taken as a set-back by Shri V. C. Shukla and therefore he resorted to harassment of the managements of the news agencies to force them to merge. Shri Mirchandani said that he had consistently opposed the merger and he had personally displeased Shri V. C. Shukla because he believed that he was instrumental in getting the Cabinet to reject the proposal. He had gone so far as to meet Shri Sanjay Gandhi in his attempts to stall the merger. Hence he was forced into retirement on Shri Shukla's insistent demands. Dr. Ram Tarneja, Chairman of

the UNI confirmed that he was put to undue pressure from Shri Shukla for obtaining Shri Mirchandani's retirement.

6.73 According to Shri Shukla, he was aware that Shri Mirchandani had opposed the merger, but said that this was because of his long service in UNI, Shri Mirchandani had become the *de facto* administrator and had developed vested interests in the continuance of the UNI. Shri Shukla also said that it was felt that a person who had no faith in a unified national news agency would be a hinderance to a unified set up.

6.74 Shri P. C. Gupta, who was Chairman of the Board of Directors of PTI, Dr. Ram Tarneja, Chairman of the UNI Board have both stated that pressure was put on them by cutting off teleprinter lines, non-payment of All India Radio dues, adverse publicity given in the Press regarding their allegedly outstanding dues, etc. Shri Shukla admitted that from the time Cabinet directed him to try 'other methods' on December 13, 1975, to the time they bore fruit on January 24, 1976, that is, a period of 1 month and 11 days, the agencies were compelled, induced or persuaded by so-called 'other methods' to join in the scheme of merger; but he said that it was not correct to say that the entire thing materialised in one month and 13 days, that it was the final stage of the effort that took shape after the Cabinet meeting of December 13, 1975.

6.75 The functioning of Samachar during the Emergency both administratively and editorially was supervised by Government. According to Shri G. Kasturi, who was Chairman of the Samachar Board, there was no interference of the Government in the working of Samachar, but from time to time the Government and Shri Shukla made suggestions which one had to consider because the Government was in it from the very beginning and they required its assistance for putting Samachar on its feet. However, from the documents available with the Ministry of Information and Broadcasting it is apparent that Shri Kasturi did consult Shri K. N. Prasad regarding advice he had given to Shri Mohd. Yunus about the constitution of three Samachar Committees. Similarly, Shri Prasad had got agenda points cleared by Shri Mohd. Yunus and Shri V. C. Shukla, so that Shri Yunus could take further action upon them at meetings of the Managing Committee of the Samachar. The proceedings of the Samachar Board meeting were also being sent to Shri K. N. Prasad. Shri W. Lazarus, who was the General Manager of the Samachar also admitted having supplied lists of Samachar personnel for verification by Government agencies. Shri Lazarus also said that he was frequently in touch with Government on matters relating to finances but he did not take any direction from the Government on any matter.

6.75A Shri P. C. Gupta and Dr. Ram Tarneja, both members of the Samachar Committee stated that Samachar was being ordered continuously in respect of various matters concerning its administration by the Government.

6.76 As regards editorial control, various members of the editorial staff, Shri P. S. Kasbekar, Shri C. P. Maniktala, Shri C. K. Arora, Shri D. V. Desai and others have testified that instructions were received from the Government and from other authorities about giving proper coverage to Government and Congress Party activities, and also to keep coverage of opposition activities on a low key. In particular, during the election campaign this imbalance of news was accentuated. The type of stories put out by Samachar can be seen from the original stories and their edited versions. Photo copies of a few illustrative examples are attached as appendices to this Chapter. Shri Lazarus, Member Editorial and General Manager of the Samachar and Dr. Raj K. Nigam, Executive Member of the Samachar Board used to attend coordination meetings which were held by Shri S. M. H. Burney in the Ministry of Information and Broadcasting during the election campaign.

6.77 Shri K. N. Prasad, Additional Secretary, stated that while he was not aware of any interference by the Ministry in the editorial freedom of Samachar, there would be instances of Samachar receiving instructions in regard to news meant for censorship and Press release. Shri Lazarus denied that he had ever given instructions to play up Government and Congress Party news and to keep coverage of opposition parties on a low key. He only issued instructions that sensitive copies should be referred to him and he never regarded Samachar as a mere channel for carrying out Government versions of stories. However, certain instances of tailoring of stories to suit the Government's needs, for example, the story regarding Shri Jagjivan Ram's resignation from the Congress, were put to Shri Lazarus and he affirmed that this had been done at the instance of Shri Shukla.

3. Harassment of Journalists

6.78 To enable the Press to cover the activities of the Government accreditation to Government of India is granted to correspondents and news cameramen based in Delhi. The accreditation was governed by two sets of rules for correspondents and cameramen respectively. In addition the decision of the Central Press Accreditation Committee was treated as a convention and was followed in deciding individual cases. In February, 1976, the Government reconstituted the accreditation committee and the number of Government nominees was raised from two to three in a total committee of 11.

6.79 During the period following declaration of Emergency, accreditation of a number of correspondents was terminated and a bulk of these decisions was taken as a part of a review which was endorsed by the Central Press Accreditation Committee at its meeting held in February, 1976. At this meeting number of deletions were suggested by the then Principal Information Officer, Dr. A. R. Baji, on the basis of a decision of the Government.

6.80 According to Shri K. N. Prasad in February 1976, Shri Shukla gave cyclostyled list of Accredited Correspondents and he was ordered that a record

check should be made of those who were associated with banned organisations. Shri Prasad got this done from the Intelligence Bureau and then returned the list to the Minister. A note on the file by Shri Prasad shows, that the list was seen by the Minister and he approved of the principles and guidelines to be adopted for granting accreditation. Thirty-three correspondents were dis-accredited, the reasons for some of them were the adverse verification reports and for others their anti-establishment stances. All these cases were approved by the Minister. Shri Shukla admitted that he had given instructions for getting the verification of the antecedents of correspondents done.

6.81 Shri Prasad also admitted to having character and antecedents of a number of journalists verified by the Intelligence Bureau. He said that this was done at the instance of the Minister, but did not know the reasons why it was done.

6.82 As regards foreign correspondents, a number of restrictions were placed on them to make them conform to Government policy; for instance, they had to sign a bond agreeing to abide by the censorship laws. According to Shri Shukla, Minister for Information and Broadcasting, it was the Government policy that the law should apply equally to both foreign correspondents as well as Indian correspondents and if they wanted to operate in India, they had to conform to the laws of the land.

6.83 The Indian representatives of foreign journals were subjected to great harassment, for example, Shri Ramanujam, who was the representative of the 'Newsweek' magazine of USA had his telephone cut, his accommodation taken back and his accreditation withdrawn in spite of the fact that 'Newsweek' expressly told the Government of India that Shri Ramanujam was not responsible for any participation in any 'Newsweek' reporting from India since censorship was imposed.

C. FUNCTIONING OF GOVERNMENT MEDIA UNITS

6.84 The Government Media Units had two main functions during the Emergency. They were at once a source of patronage and also they were used for building up the image of a political party and a few of its leaders.

1. DAVP

6.85 The DAVP was used on a large scale for giving advertisement support to various souvenirs brought out by the Congress Party. Opposition parties were denied any such patronage. Thus, during the year 1974-75, 1975-76 and 1976-77, the Congress Party and its various wings received advertisement support from the DAVP alone worth Rs. 3,868, Rs. 52,615 and Rs. 80,325, respectively; whereas the opposition parties during the same period received Rs. 1,403, Rs. 1,700 and Rs. nil, respectively.

6.86 Not merely was the Congress Party given extensive advertising support but there was an instance when rates per page for souvenirs were increased after they had been agreed upon and the souvenirs printed. Thus, the rate fixed for advertisements for the souvenirs brought out on the occasion of the All India Congress Committee meeting at Delhi was originally Rs. 1,000 per page. Twenty advertisements were released at this rate on the orders of Shri V. C. Shukla on May 18, 1976. On June 15, 1976, the Delhi Pradesh Congress Committee submitted a bill for Rs. 40,000 at Rs. 2,000 per page. Shri C. K. Sharma, Private Secretary to Shri V. C. Shukla, instructed the DAVP to make the payment at the enhanced rates. He said that he had instructed the DAVP to make the payment after he had consulted the Minister.

6.87 Shri Shukla, the then Minister for Information and Broadcasting, stated that, regarding giving of advertisements for souvenirs, the Government had strictly followed the guidelines laid down to the best of its ability and that he had nothing more to add.

2. All India Radio

6.88 According to Shri S. C. Bhatt, Director, News Services Division, All India Radio, rigid constraints were imposed on All India Radio after the imposition of Emergency. He said that throughout the Emergency period it was the Government's policy to play up the speeches of Smt. Indira Gandhi and her son, Shri Sanjay Gandhi. He stated that written and unwritten instructions were frequently received by All India Radio from the Minister himself and sometimes also directly from the Prime Minister's Secretariat. In all, Smt. Gandhi's pronouncements were carried on 171 occasions on news reels and Samachar Darshan programmes and Shri Sanjay Gandhi figured 24 times on these programmes. Besides, All India Radio gave wide publicity to Shri Sanjay Gandhi and 192 items were carried on Shri Sanjay Gandhi in the main news bulletins broadcast between January 1, 1976 and January 18, 1977. A few illustrative examples of the type of coverage on Shri Sanjay Gandhi are given below :—

- (i) "Earlier on his arrival in Bhopal, Shri Gandhi was given a rousing welcome by a large crowd of men, women and children".

[A.I.R. News : February 26, 1976—2100 Hrs.]

- (ii) "Mr. Sanjay Gandhi was taken in a big procession through the streets of Guntur to the police parade ground".

[A.I.R. News : March 21, 1976—0810 Hrs.]

- (iii) "Hundreds of thousands of people lined up the roads in Tirupati and Tirumalai to cheer Mr. Gandhi".

[A.I.R. News : March 21, 1976—2100 Hrs.]

- (iv) "The Youth Congress leader Mr. Sanjay Gandhi had discussions with officials in Agra today on plans to beautify and clean the historic city", "earlier on arrival in Agra

Mr. Gandhi was given an affectionate welcome by a big crowd".

[A.I.R. News : May 2, 1976—2100 Hrs.].

- (v) "On arrival at Bombay Airport Mr. Sanjay Gandhi was accorded a big welcome. The Maharashtra Chief Minister, Mr. S. B. Chavan, his Cabinet colleagues and many Congress and Youth Congress leaders received him at the Airport. He was profusely garlanded on behalf of several organisations. Several organisations gave a grand welcome to Mr. Sanjay Gandhi all along the route from the Airport."

[A.I.R. News : October 29, 1976—2100 Hrs.].

- (vi) "The AIR correspondent says that lakhs of people turned up in Karnal to greet Mr. Sanjay Gandhi. The town wore a festive look".

[A.I.R. News : January 11, 1977—2100 Hrs.].

6.89 Shri Bhatt also said that the AIR news was used for broadcasting inspired news denigrating Congress leaders who had fallen out of favour with the ruling coterie. Thus, a series of stories condemnatory of Smt. Nandini Satpathy were broadcast just before President's Rule was imposed in Orissa.

6.90 The slant against the opposition was so obvious that in December, 1976, AIR bulletins devoted 2207 lines to the spokesmen of the Congress Party as against 34 lines to the opposition. In December, 1974, the same figures were 571 and 522 respectively. According to Shri Shukla, most of the spokesmen of the Congress Party were Ministers and hence there was nothing wrong in publicising their views on matters concerning the Government.

6.91 According to Shri Bhatt, during the election campaign, the All India Radio distorted news in favour of the Government and the ratio of news between the Government and the opposition parties went up to as much as 8.5 : 1. The Minister was frequently giving instructions regarding the type and scope of the news which should be carried. The All India Radio News was subjected to approval by the Secretary Shri Burney and the Additional Secretary Shri Prasad before it was put out on the air.

6.92 This came about because Smt. Indira Gandhi had sent for Shri Burney and complained to him that the Ministry of Information and Broadcasting was not managing the press well and that AIR/TV were also not functioning properly. After receiving these comments of the Prime Minister, Shri Burney directed that news bulletins would be cleared by him or Shri K. N. Prasad.

6.93 According to Shri Shukla it was at his instance that instructions were issued to Shri Burney that monitoring of AIR news should be done by him or by Shri Prasad as Shri Shukla had received some complaints that the coverage in news bulletins of AIR was not appropriate to Government.

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6.94 Shri Shukla also admitted to having talked to the Director General of All India Radio to give him the story regarding the alleged attack on Shri Sanjay Gandhi at Amethi on March 14-15, 1977. Shri Shukla also issued directions that reactions of important Congress leaders to the attack on Shri Sanjay Gandhi should be obtained and broadcast the following morning. Shri Shukla further stated that he had instructed his staff members at Raipur to indicate to AIR that the news regarding the alleged attack on Shri Purshotam Lal Kaushik, the rival candidate at Raipur may not be reported as other instances of poll violence were not reported.

6.95 One hundred forty new posts of part-time Correspondents had been created in the AIR in March, 1976. As a rule in the past, part-time Correspondents were appointed from amongst those already serving in a newspaper and the appointment was made by the Director News Services. For filling up these new posts the method and criteria for appointment were changed on April 23, 1976. The appointment was vested in a committee consisting of Joint Secretary (Information) and Joint Secretary (Broadcasting) of the Ministry and the informal approval of the Minister had to be obtained before the appointments could be made.

6.96 After the change of criteria three part-time Correspondents were appointed to AIR, all of whom were office bearers of the Congress party. Shri Shukla said that he did appoint these people as part-time Correspondents even though his staff had told him about their political backgrounds, but he said that it would be unwarranted to say that these people were appointed because they were members of the Congress Party. He said that as a matter of policy the bar on members of political parties being appointed was removed, and if a person was otherwise suitable he could be appointed. He, however, could not recall any instance of a person belonging to another political party being appointed to this post.

6.97 Shri G. L. Vohra had been working as All India Radio's part-time Correspondent at Raipur from October 1, 1963. According to Shri S. C. Bhatt, his performance was generally considered satisfactory and his contract was renewed from time to time. On March 19, 1977, the Special Assistant to the Minister for Information and Broadcasting, Shri V. S. Tripathi spoke to Shri Bhatt and told him that the Minister had desired that Shri Vohra's services should be terminated forthwith. Shri Bhatt also said that Shri Tripathi had told him that Shri Vohra had covered Smt. Vijayalakshmi Pandit's election speech at Raipur on March 17 for the AIR regional bulletin. Shri Bhatt told Shri Tripathi that AIR's story was based on Samachar report and not on Shri Vohra's coverage but Shri Tripathi said that the Minister's orders had to be carried out. Shri Tripathi confirmed that he had received instruction from the Minister for terminating Shri Vohra's services but he said that he did not know why Shri Vohra's services were terminated and he in fact said that it would be wrong to suggest that his services were terminated because he had covered the speech of Smt. Vijayalakshmi Pandit. He further said that he had

spoken about the coverage of Smt. Vijayalakshmi Pandit because he was told by the Private Secretary to Minister, who was at Raipur that he should obtain the details from Shri Bhatt about the coverage given to Smt. Vijayalakshmi Pandit's public meeting at Raipur. He said that he had ascertained from the Minister as to why Shri Vohra's services had been dispensed with and Minister had told him that it had been decided to appoint a full-time Correspondent at Raipur instead of a part-time Correspondent.

6.98 Shri V. C. Shukla said that after the elections were announced and he had gone to Raipur various reports and complaints started coming in and he had mentioned these to Shri Tripathi, who knew Shri Vohra. Further a decision had already been taken that Raipur All India Radio should have a staff correspondent rather than a stringer and this decision had been taken much before the elections. Therefore, when during the election campaign reports regarding Shri Vohra had reached him, he had decided that no action should be taken to remove Shri Vohra during the election campaign lest it may be misunderstood that it was done for some reasons connected with elections. Therefore, he told Shri Tripathi after the polling in his constituency (Raipur) to instruct Shri Bhatt to remove Shri Vohra as All India Radio's part-time Correspondent at Raipur. Shri Shukla further stated that though the Janata Party Government had restored Shri Vohra and gave to him the post of part-time Correspondent, soon after this they again removed him and posted, in accordance with the decision taken earlier, a staff correspondent of All India Radio at Raipur and that Shri Vohra may have been reinstated at the most for a month or two. He said that Shri Vohra's coverage of Smt. Vijayalakshmi Pandit's meeting was quite fair and no exception could be taken to that coverage.

3. Doordarshan

6.99 The coverage of Shri Sanjay Gandhi by Doordarshan went up after December, 1975. In all, a sum of Rs. 8,33,055 was incurred during the period of Emergency on coverage of Shri Sanjay Gandhi. Shri Shukla justified the extraordinary publicity given to Shri Sanjay Gandhi on the ground that at that time even private media were paying considerable attention to the doings of Shri Sanjay Gandhi.

6.100 As regards the coverage of the Prime Minister, both over AIR and Doordarshan, Shri Shukla stated that it was the normal function of the Government Media Departments to cover the activities of the Government and its leader, the Prime Minister.

4. Films Division

6.101 A number of films were produced by the Films Division to project the image of Shri Sanjay Gandhi not only as a Youth leader but as a leader in his own right. The decision to produce these films was taken at meetings presided over by Shri S. M. H. Burney at which was present Shri Navin Chawla, Secretary to the Lt. Governor of Delhi.

6.102 According to Shri K. K. Kapil, Joint Chief Producer of Films Division, it was Shri S. M. H. Burney who had directed him to produce these films so that the personality of Shri Sanjay Gandhi could be brought out in an oblique and subtle manner and that he should get in touch with Shri Navin Chawla, who was virtually nominated as consultant for these films.

6.103 According to Shri Navin Chawla, he had played a role in production of these films at the instance of the Lt. Governor of Delhi, who had spoken to Shri S. M. H. Burney for preparation of publicity films for the Delhi Administration. Shri Burney had then formed a working group for this matter. Shri Chawla participated in this as a representative of the Lt. Governor. Shri Navin Chawla said that he used to see the films and clear them at the instance of Shri Burney. He denied that he ever directed anyone to project Shri Sanjay Gandhi as the main personality in these films or as a hero of the projects depicted in these films. On a suggestion from Shri Kapil in a casual conversation he had agreed with him that films on Shri Sanjay Gandhi should be preserved and they should not be wasted. He recollected that this matter was taken up in the group meeting.

5. Directorate of Field Publicity and the Song and Drama Division.

6.104 The other Government media i.e. Directorate of Field Publicity, Song and Drama Division, were also asked to project the image of Smt. Gandhi and the Congress party as testified to by Dr. A. R. Baji, Director of Field Publicity and Shri Birendra Narayan, Director, Song and Drama Division. Dr. Baji, who was earlier the Principal Information Officer had also been directed by Shri Shukla to contact the Editor of the 'Statesman' newspaper and asked him to give full publicity both photowise and newswise to Smt. Gandhi and to Shri D. K. Barooah, the then Congress President. According to Shri Shukla, it was the normal function of the Principal Information Officer to project the image of the leader of the Government and he did not see anything wrong in it.

6. Multi-media Campaigns

6.105 A number of multi-media campaigns were launched during the Emergency to coincide with important milestones in Smt. Gandhi's career. The most important were the "Decade of Achievement" and "The Year of Fulfilment". The former was organised when Smt. Gandhi had completed ten years in power as Prime Minister. Various Government media departments were given detailed instructions on how this was to be publicised. Thus, Directorate of Field Publicity was to screen extensively the seven films that it had on the Prime Minister, and also to obtain in sufficient numbers the tapes of Smt. Gandhi's broadcast of November 11, 1975 for extensive publicity in semi-urban and rural areas. The Films Division also prepared a film, "A Day with the Prime Minister". The AIR was directed to select 200 quotations from Smt. Gandhi's speeches and to put out five to ten of these quotations daily on the air. The Publications Division

was directed to boost the sales of Smt. Gandhi's books and to publish informative and interesting sketches with photograph of Smt. Gandhi in various journals and periodicals.

6.106 According to Shri K. N. Prasad the emphasis was not to justify the emergency but on the gains of the emergency. He also said that he was never in touch with the All India Congress Committee or Shri Yashpal Kapoor on this subject, but that at one of the meetings held in Shri Dharam Vir Sinha, Deputy Minister's house on the 'Decade of Achievement' he found Shri Yashpal Kapoor there who gave out a complete programme of what the Congress Party was doing. Shri Prasad took it and kept it on the file but he never got in touch with Shri Kapoor or anybody in the Congress Party to coordinate or do anything.

6.107 Shri Shukla denied that these campaigns were organised to build up the image of Smt. Gandhi. He said that these were organised to build up and project the image of the Government and those who were functioning within the Government and nothing in this was done "to project the image or throw up the image of anybody who was not functioning within the Government".

6.108 During the election campaign another multi-media publicity campaign was launched entitled "The Campaign 1977, the Content Strategy". According to Dr. N. Bhaskar Rao, a consultant to the Ministry of Information and Broadcasting, on the evening of January 19, 1977, Shri Hit Prakash, Joint Secretary in the Ministry of Information and Broadcasting had asked him to prepare a note on the basis of instructions that he had received from the Secretary on the election campaign. Dr. Bhaskar Rao met Shri S. M. H. Burney the next day, i.e., January 20, 1977. Shri Burney in addition to what Shri Hit Prakash had suggested wanted Dr. Bhaskar Rao to identify the areas where the then Opposition parties were having a strong hold and to suggest methods for intensifying campaign in those areas. Shri Burney himself identified some areas and he also wanted that some of the achievements and qualities of Smt. Indira Gandhi should be highlighted in his campaign. He further directed Dr. Rao to prepare media-wise activities for this campaign. Dr. Rao accordingly compiled a note and gave copies of it to Shri Burney, Shri K. N. Prasad and Shri Hit Prakash on January 21, 1977. The original of the note was identified by Dr. Rao during the Commission's hearings. This contained a list of 30 specific themes associated with Smt. Gandhi and the Emergency which would

appeal easily to the people and publicised the achievements of the Government. He also gave suggestions to counteract likely/potential arguments of the Opposition some of which could be forestalled while others could be countered as and when they became issues. He had also admitted to have identified towns and cities where the Opposition was strong but suggested that this could be further narrowed down by local field units after consulting the other wings of the Government and party leadership. He had also suggested that responsible persons in the Ministry should monitor the various kinds of campaign issues raised by the Opposition so that corrective measures could be taken.

6.109 Dr. Bhaskar Rao has further stated that a few days after this note was prepared Shri Hit Prakash met him in Shri Gopalakrishnan, Director (IP), I&B Ministry's room and told him that the earlier note needed revision. Shri Hit Prakash told him that as the note had been specifically mentioned in the minutes and could not be withdrawn altogether another had to be substituted for it. Subsequently, Dr. Rao prepared another note. Dr. Rao admitted to the Commission that he had realised that there was a complete identity established in his report between the Government and the party but he had done it under the impression that he had been merely asked to give some points for the meeting and that this note would not be distributed.

6.110 Shri Gopalakrishnan told the Commission that when he read Dr. Rao's note he felt that it was not a proper note to be issued and he had gone to Shri Hit Prakash and told him that the note should be withdrawn. Shri Hit Prakash had agreed with him and after a word with Shri Burney, Dr. Rao was asked to revise his original note. Shri Gopalakrishnan agreed that even in the amended note there were certain facts like the percentage of polling by the various parties which was not strictly warranted in an official document.

6.111 Shri Burney denied that he had ever asked Dr. Rao to prepare any paper and he was not aware if anybody in the Ministry had asked him to do so. He said that this paper was prepared voluntarily by Dr. Rao. He said that Dr. Rao was a Consultant to the Ministry and that he used to prepare a number of such papers evaluating the performance of Government Media Units and he thought that Dr. Rao had prepared a paper for reorienting publicity in the wake of the Chief Ministers' Conference where it was decided that 20 plus 5 point Programme should be highlighted. Shri Burney admitted that the paper was under circulation for a day or two before it was substituted.

CHAPTER VII

1. *The case regarding the reversion of Shri Justice Aggarwal of Delhi High Court :*

7.1 Shri R. N. Aggarwal, who belonged to the Higher Judicial Service of the Union Territory of Delhi, was promoted in 1972 to the High Court of Delhi and was appointed as an Additional Judge of the High Court. The term of Shri R. N. Aggarwal was extended for another two years from 1974, also as an Additional Judge. On August 13, 1975, there occurred a vacancy on the retirement of Shri Justice Jagjit Singh in the High Court. Normally, Shri R. N. Aggarwal who was the seniormost Additional Judge, would have been appointed to fill that post which had fallen vacant. The Chief Justice of the High Court recommended Shri R. N. Aggarwal for appointment as a permanent Judge. On September 22, 1975, he recommended that Shri Aggarwal was an "asset to the High Court". The Deputy Secretary prepared a note on September 27, 1975, which was submitted to the Secretary, Department of Justice and the approval of the Chief Justice of India to the appointment of Shri R. N. Aggarwal as a permanent Judge was obtained on October 27, 1975. On January 3, 1976, the Minister of Law, Justice and Company Affairs directed that the appointment of Shri Aggarwal as a permanent Judge be processed. That implied his approval to the recommendation.

7.2 Shri Aggarwal was not appointed a permanent Judge of the High Court and he had to revert as a Sessions Judge.

7.3 What transpired between the period January 3, 1976 and January 12, 1976 is not evident from the file. It appears that on November 3, 1975, Shri P. P. Nayyar, a Joint Secretary in the Department of Justice had sent a note stating that Shri Justice R. N. Aggarwal was one of the Judges on the "MISA Bench" of the Delhi High Court. On this note Shri Khurana, Secretary, Department of Justice, noted on November 4, 1975 that the matter should be discussed as to when the Judgment in Shri Kuldip Nayar's case was announced. On December 4, 1975, the Joint Secretary noted that the judgment was delivered "on 15-7-75". He also noted that the Law Minister wanted the case to be processed early and the file to be put up to him. The file was, accordingly, re-submitted. Later, it appears that there was some discussion between Shri Gokhale, the Law Minister, and the Secretary, Department of Justice, when pursuant to that it was recorded on January 3, 1976 that the Law Minister desired that the appointment of Shri R. N. Aggarwal as a permanent Judge be processed.

7.4 Thereafter at the request of Shri Khurana, Secretary, Department of Justice, inquiries were made by the Intelligence Bureau concerning Shri Aggarwal.

Shri S. N. Mathur, Director, Intelligence Bureau, reported on January 12, 1976 that Shri R. N. Aggarwal belonged to Judicial Service of Delhi and was closely associated with R.S.S. in 1950s and early 1960s. It was also mentioned in the report that he used to attend *Shakhas* of R.S.S., in the Naya Bazar area of Delhi and that he had stopped taking part in the activities of the R.S.S., in the early 1960s after the Government issued orders prohibiting the Government servants from participating in such activities. It would also appear from the report of the Intelligence Bureau that there were also other grounds raised against Shri Aggarwal, but no further details were set out. Thereafter on January 14, 1976, Shri Khurana recorded that the report received from the Director of Intelligence Bureau may be taken into consideration in making the recommendation to the Prime Minister. Shri Gokhale prepared a note which is on the file but undated, challenging the correctness of the association of Shri Aggarwal with the R.S.S., for the related period as Shri Aggarwal was not in fact in Delhi in the 1950s and early 1960s and further stated that nothing was brought to his notice with regard to any specific matter which may render him unfit to be appointed.

7.5 Shri Gokhale has stated before the Commission that the allegations against Shri Aggarwal "were not correct and I did it on the basis of facts which I had meanwhile collected on my own, and had seen that this report was not correct and what was alleged there was not substantiated. Even the general allegations about Mr. Justice Aggarwal are.....not.....correct.That is the note which I prepared and I had handed it over personally to the Prime Minister. According to me it was demonstrably wrong and then she said, "I will ask the Home Ministry", and perhaps she did. I do not know whom she asked. "I saw her after some days again..... She said that she was told that the report was correct. The report which I had contested was correct and she had given me to understand that it was not intended to confirm Mr. Justice Aggarwal. Now after this happened I made a note". Apparently, thereafter the papers were submitted to the Prime Minister by Shri Gokhale, the Law Minister, on February 20, 1976 not recommending confirmation/extension to Justice R. N. Aggarwal and this was approved by Smt. Indira Gandhi on February 24, 1976.

7.6 Shri Aggarwal in not being confirmed had to revert as a Sessions Judge in the Delhi Administration.

7.7 In the course of his examination, the Director of the Intelligence Bureau has disclosed that there were some further inquiries made and some information was collected. Whether that information was submitted to the Prime Minister or the Government does not appear from the record. But Shri Gokhale has stated that he had prepared a note which was submitted to the

Prime Minister recommending the appointment of Shri Aggarwal; but that the Prime Minister declined to accept the recommendation.

7.8 On a review of the files of the Government and considered in the light of the evidence, it appears that Shri R. N. Aggarwal, who was regarded by the Chief Justice as an asset to the High Court and who had functioned as a Judge for nearly four years, was asked to revert to his original position as a Sessions Judge.

7.9 Smt. Gandhi has, in the reply which she gave on the 21st of November, 1977, refused the request to assist the Commission in the proceedings and stated that the Prime Minister was the "key-stone of the Constitution" and was entitled to over-rule the recommendation of a Cabinet colleague. She also stated that it was in the light of this Constitutional position that her decision not to confirm Shri Justice R. N. Aggarwal may be considered by the Commission. She further stated that she had no personal acquaintance with Shri R. N. Aggarwal nor had she any private information and that her decision was based upon an assessment of the facts placed before her and the conflicting recommendations that she had received from the Ministers of Law and Home Affairs. She invited the Commission to examine official sources to determine that no consideration whatsoever other than those of public interest, adjudged in the circumstances, were involved in her decision. But she declined to file a statement on oath pursuant to a notice under rule 5(2)(a), as required in terms of rule 5(3).

7.10 When a summons was issued to her under section 8B of the Commissions of Inquiry Act, she appeared before the Commission but declined to take oath and give evidence on the plea that she was not legally and Constitutionally bound to give such evidence. When requested by the Commission to give evidence, she categorically declined to do so.

7.11 The question, which this Commission has been called upon to decide is whether the action of the former Prime Minister Smt. Indira Gandhi amounted to an abuse of authority or misuse of power. As submitted by her in her letter dated 21st of November, 1977, she had no personal acquaintance with Shri Aggarwal and she had no private information and that no consideration other than those of public interest adjudged in the circumstances, were involved in her decision. There was the evidence of the report of the Chief Justice that Shri Aggarwal was an asset to the High Court of Delhi. He had functioned as a Judge for four years in the High Court and nothing adverse had come to the notice of anybody during that time. The Minister of Law and Justice had apparently agreed with the recommendation of the Judge of the High Court and the Chief Justice of India that Shri Aggarwal should be appointed to the office of a permanent Judge of the High Court.

7.12 It is true that for adequate reasons it may be open to the Prime Minister notwithstanding the recommendations so made to overrule the recommendations and decline to confirm the appointment as recommended. But this case discloses two disturbing facts:—

- (a) (i) that sometime in the month of August, 1975, a petition for a writ of Habeas Corpus

was filed by one Shri Kuldip Nayar, a Journalist. The petition was heard by the Delhi High Court by a Bench consisting of S. Rangarajan and R. N. Aggarwal, JJ and the orders of the Government were set aside and the attitude of the Government's decision was criticised, especially the manner in which the orders were passed.

(ii) Soon thereafter Shri Justice S. Rangarajan was transferred from the Delhi High Court and Shri Justice R. N. Aggarwal was not confirmed in a clear vacancy, which had occurred in the High Court and to which, in the normal course, he would have been appointed.

(iii) It appears that in Kuldip Nayar's case after the hearing was concluded, the Government finding its position in regard to the merits of the orders passed against Shri Kuldip Nayar unsustainable, intimated to the court that the orders against Shri Kuldip Nayar were withdrawn and he had been ordered to be released. It was, therefore, expected by the Government that since "the Government have already revoked the detention order of the detenu and as such decision in the Habeas Corpus had become infructuous". However, the court proceeded to deliver its judgment and criticised the conduct of the Government. There can be no doubt that the procedure followed by the Bench was correct. Because a party to a dispute, after arguing on the merits of the case, when faced with the prospect of an adverse decision, would not be permitted to amend the order or to withdraw the order to forestall the decision by seeking to withdraw the action taken by it or the orders made by it.

- b) (i) Though inquiries must have been made with regard to the antecedents of Shri Justice R. N. Aggarwal when he was to be appointed as Judge of the High Court and when he had continued as an Additional Judge for about four years, nothing adverse is available on record of the Government. Thereafter for the mere reason which is not very clearly disclosed on the file, when a recommendation for the appointment of Shri Justice Aggarwal as a permanent Judge was received from the High Court of Delhi, Shri P. P. Nayyar, Joint Secretary in the Department of Justice, invited the attention of the superior officers that Shri Justice R. N. Aggarwal was one of the two Judges in the "MISA Bench" of the High Court of Delhi, apparently intending to invite the attention that he had participated in delivering the judgment in Kuldip Nayar's case. The information was obtained and was placed on the file.

(ii) In the meantime, it appears that a report was obtained from the Director of Intelligence Bureau with regard to Shri Aggarwal. The circumstances in which this

report appears to have been received, are not clearly apparent from the record. The Law Minister, before whom the papers were placed, challenged the correctness of the association of Shri Aggarwal with the R.S.S., which was reported, on the ground that the report could not be true because Shri Aggarwal was not even in Delhi at the time when he was alleged to have participated in the activities of R.S.S. in Delhi.

(iii) The file is silent for the period from January 14, to February 20, 1976. It appears, however, from the circumstances mentioned earlier that the papers had been submitted to the Prime Minister and Shri Gokhale had discussed the case with her. The circumstances do tend to create an impression that because of the participation of Shri Aggarwal in the hearing and disposal of a case filed by Shri Kuldip Nayar, the Government was put in an awkward position and that may have been responsible to some extent in re-considering whether Shri Aggarwal should be continued as a Judge of the High Court. Thereafter, a report was obtained from the Intelligence Bureau and the papers were submitted to the Prime Minister. The Prime Minister, Smt. Indira Gandhi, though has asserted through her letter dated November 21, 1977 that she had no private information and she acted on the conflicting reports of the Home Ministry and the Law Ministry, has not chosen to file a statement on oath, as required by rule 5(3) and has declined to come into the witness box and to take an oath and give evidence of her version, when requested by the Commission and has declined also to give evidence in pursuance of the summons issued to her under section 8B of the Act. It would, therefore, be open to the Commission to draw an adverse inference against her.

(iv) On the one side there was the evidence of the persons who had the opportunity to note the quality of his work and be acquainted with him in the discharge of his duties, which was all favourable to him. On the other, there were the orders of the Prime Minister, which, she says, she passed declining to confirm Shri Aggarwal in the post of a Permanent Judge in exercise of her authority to overrule the recommendation made by the Law Minister. That in an appropriate case the Prime Minister may have to exercise such an authority is not a matter which is relevant to this case.

(v) The question falling for consideration is whether the action of the former Prime Minister amounted to abuse of authority and misuse of power. On that part of the case there is no evidence whatever led by the Prime Minister in support of her version that it was a bona fide act done by her as

a Prime Minister in the interest of the administration; whereas the evidence disclosed on the file and the oral evidence are clearly indicative of the fact that there were no circumstances which would have come in the way of Shri Aggarwal being appointed as a Permanent Judge of the High Court.

7.13 It may be noticed that in the hierarchy of courts the position of a Judge of a High Court is superior to that of a Sessions Court; but the importance of the office of a Sessions Judge cannot on that account be minimised. The Sessions Judge, who also occupies the office of the District Judge, exercises unlimited jurisdiction in civil matters and is competent to impose all sentences including a sentence even of death, subject, of course, to confirmation by the High Court. If for any reason Shri Aggarwal was thought by Smt. Gandhi to be unfit to hold the office of a Judge of the High Court that would have been equally a ground on which he would have been unfit to hold the high office of a Sessions Judge in the Union Territory of Delhi. But Shri Aggarwal was reverted to the office of the Sessions Judge and he continued to hold that office till he was again elevated to the High Court later in the year 1977. That is a ground, which clearly indicates that the order passed against Shri Aggarwal was, *prima facie*, in the nature of an order of punishment for participating in the hearing in Kuldip Nayar's case and passing an order which tarnished the image of the Government in the public eye.

7.14 The Commission is, therefore, of the view that a case of misuse of authority and abuse of power is disclosed in this case, against Smt. Gandhi.

2. Refusal by Smt. Indira Gandhi to extend the term of Shri Justice U. R. Lalit of the Bombay High Court.

7.15 Shri U. R. Lalit, an Additional Judge of the High Court of Bombay, was recommended for extension of the tenure of his office by the Chief Justice of the High Court of Bombay. The recommendation was accepted by the Chief Minister of Maharashtra, by the Governor of Maharashtra, by the Chief Justice of India and by the Minister for Law, Justice and Company Affairs of the Government of India. There were no adverse reports against Shri U. R. Lalit. The then Prime Minister, Smt. Indira Gandhi declined to agree to Shri U. R. Lalit continuing as a Judge of the High Court of Bombay. Accordingly, he ceased to be a Judge on January 17, 1976.

7.16 Shri H. R. Gokhale, Minister of Law, affirmed that there were no grounds for not extending the term of Shri Lalit. Shri S. L. Khurana, the Secretary, Department of Justice, was also examined. From the file relating to Shri Lalit it appears that the Prime Minister's Secretariat returned the file without any endorsement. Shri Khurana then made a note that it was not intended to give any further extension to Shri Lalit; and, therefore, further steps should be taken to examine the position immediately.

7.17 A slip, which was a part of the file, has since been discovered from the Prime Minister's Secretariat

by the officers of the Commission. A note is made by an official of the P.M.'s Secretariat stating :

"Sometime ago a proposal of the Department of Justice to continue Justice Lalit as an Additional Judge of the Bombay High Court was submitted to P.M. Justice Lalit's present term is expiring on 16-1-76 and the fresh appointment has to be made before that. Law Minister has been reminding me about this case. He told me that he had spoken to P.M. also about this case a few days ago."

The note is signed by Shri B. N. Tandon, the then Joint Secretary to the Prime Minister and is dated 12th of January, 1976.

7.18 It bears a note made in the hand-writing of the Prime Minister :

"I do *not* approve of giving him another term."

The word 'not' has been underlined. It is dated January 12, 1976. On that Shri Tandon made a note :

"Secretary may kindly see for information." and thereafter the file was returned to the Minister with an intimation that the

"P.M. has spoken to him."

The file was, accordingly, returned.

7.19 The Commission had requested Smt. Gandhi to appear before the Commission and assist the Commission by giving information relating to the non-appointment of Shri Lalit. Through her letter dated November 21, 1977, Smt. Indira Gandhi stated that the Prime Minister is competent to overrule the recommendations of a Cabinet colleague and that in the light of this Constitutional position, the decision was taken not to confirm Shri Justice Lalit. She further stated that she had no personal acquaintance with the Judge concerned nor any private information and her decision was made upon an assessment of facts placed before her and the conflicting recommendations that she had received from the Ministers of Law and Home Affairs. She invited the Commission to examine the official records and determine that no considerations whatever, other than of public interest, adjudged in the circumstances were involved in her decisions.

7.20 The reply filed by Smt. Gandhi was not as required by rule 5(3) of the Commissions of Inquiry Rules. She has, however, clearly stated in her reply, which is not on oath, that she had no private information except what was contained in the file. But the file contained no material which was adverse to Shri Lalit.

7.21 Shri Gokhale, who gave his testimony on oath, has also stated that there was nothing against Shri Lalit and that it was only because Smt. Gandhi declined to confirm his appointment for another term as Additional Judge that he was constrained not to continue Shri Lalit in office.

7.22 A notice was issued to Smt. Indira Gandhi under rule 5(2)(a) of the Commissions of Inquiry Rules and she was asked to file her statement. In view of the disclosures made by Shri Gokhale, a summons was also issued to her under Section 8B of the Commissions of Inquiry Act. She remained present in the Commission Hall but declined to take oath and give evidence when requested by the Commission to go into the witness box to enable the Commission to ascertain what her version was. In the circumstances, the Commission would be justified in drawing adverse inference having regard to all the materials placed before the Commission that this was a clear case of abuse of authority and that Smt. Gandhi arbitrarily declined to extend the term of Shri U. R. Lalit as an Additional Judge of the Bombay High Court. It may be pointed out that Shri U. R. Lalit was an Advocate practising in the Bombay High Court before his appointment as an Additional Judge. Normally when a person is appointed as an Additional Judge from the Bar it is expected that he would be confirmed as a Judge when a permanent vacancy arises. It appears further that there had been hardly any case in which such confirmation had not been made. There were, no materials at all on which it could even be faintly suggested that Shri U. R. Lalit, who had functioned as a Judge for two years, was unfit to continue in office as a Judge of the High Court.

7.23 Shri Justice K. N. Wanchoo had made a note on the 29th of June, 1967 :—

"When a Member of the Bar is appointed Additional Judge it must be with a view to make him permanent in due course. If that is not possible, additional judgeship should not be offered to a member of the Bar. I agree; therefore, that an undertaking should be taken from members of the Bar that they will accept a permanent judgeship when offered to them in due course....."

Refusal to extend the term of Shri U. R. Lalit as a Judge of the High Court, therefore, amounted to subversion of well-established conventions and practices and amounted to abuse of authority and misuse of power by Smt. Indira Gandhi.

3. *Deviation from established procedure and irregularities in the appointment of Shri K. R. Puri as Governor of the Reserve Bank of India.*

7.24 In May, 1975, Shri N. C. Sen Gupta was appointed as Governor of the Reserve Bank of India for a period of three months with effect from May 19, 1975. His term was, therefore, to end on August 18, 1975. This short term appointment was made to give the Government time to identify a suitable person for the post.

7.25 Shri C. Subramaniam, the then Finance Minister, sent a Top Secret note to Smt. Indira Gandhi, then Prime Minister, on 29-7-1975 discussing the professional background and qualifications essential in an individual who is to be considered for appointment to this post. He said in this note that in assessing the suitability of an individual one has to keep in mind

the functions which the Governor has to discharge and the leadership that he has to provide to the Reserve Bank which is the Central Bank of the country. He then discussed briefly the functions and responsibilities of the Reserve Bank and its Head, the Governor. Taking into account the particularly difficult monetary situation then, he said that he would expect the Reserve Bank to be the main guide for the Government in the formulation of their monetary and fiscal policies.

7.26 In the light of these exacting requirements, Shri Subramaniam went on to discuss the qualifications of various distinguished Economists and/or Economic Administrators like Dr. I. G. Patel, Mr. Narayana Prasad, Dr. S. R. Sen and Shri M. G. Kaul, as possible incumbents for appointment to the post of Governor. He also referred to Shri K. R. Puri, the then Chairman of the Life Insurance Corporation of India. This is what he said in regard to Shri Puri :—

"P.M. has in this connection mentioned the name of Shri K. R. Puri, Chairman, L.I.C., I have examined his suitability of the post very carefully. He is an ordinary graduate and as such lacks an adequate academic background. He has been in the field of insurance throughout his career and therefore his experience has been in a very limited area of specialisation, unconnected with banking and finance."

Shri Subramaniam concluded this Top Secret note by saying that Smt. Gandhi, if she so wishes, may send for him for discussion so that an early decision may be taken. The original of this note could not be traced in the Prime Minister's office.

7.27 Eventually on August 18, 1975, Shri Subramaniam recorded the following order on the relevant file of the then Department of Banking :

"Shri K. R. Puri, now Chairman LIC, may be appointed as Governor of Reserve Bank for a period of one year. This has the concurrence of the Prime Minister. In view of the fact Shri Sen Gupta's term expires tomorrow orders of appointment may issue immediately and A.C.C., kept informed. Shri Puri may take charge tomorrow."

The A.C.C. referred to above is the Appointments Committee of the Cabinet. It should be noted at this stage that under the relevant Rules, framed for the Transaction of the Business of the Government, the appointment of the Governor of the Reserve Bank required the approval of the Appointments Committee of the Cabinet.

7.28 Pursuant to Shri Subramaniam's order, extracted above, a notification was issued on the 18th August, 1975 appointing Shri K. R. Puri as Governor of the Reserve Bank for a term of one year with effect from the close of business on the August 19, 1975.

7.29 Thereafter, on August 20, 1975, Shri M. G. Balasubramanian, the then Addl. Secretary in the

Department of Banking wrote to Shri U. C. Agarwal, Establishment Officer in the Department of Personnel and Administrative Reforms, who also functions as Secretary to the Appointments Committee of the Cabinet mentioning, *inter alia*, that it has been decided with approval of the Prime Minister to appoint Shri K. R. Puri as the Governor of the Reserve Bank of India for a period of one year with effect from the close of business on August 19, 1975, that the relevant Government notification has already been issued on the August 18, 1975 and that Shri Aggarwal may consider "recording the information suitably in the office of the Appointments Committee of the Cabinet."

7.30 The Appointments Committee of the Cabinet consisted at the relevant time of the Prime Minister, the Home Minister and the Minister concerned in the Ministry or the Department whose proposal is being considered by the Committee. There is no evidence in the relevant papers to indicate that the Home Minister was consulted at any stage before Shri K. R. Puri's appointment as Governor of the Reserve Bank.

7.31 It is seen from the evidence of Shri C. Subramaniam before the Commission that there was disagreement in regard to the choice of a successor to Shri S. Jagannathan as Governor of the Reserve Bank and it is because of this disagreement that the interim appointment of Shri Sen Gupta was made. Shri Subramaniam has stated further that even at that stage Shri Puri's name had been mentioned to him and that he could not agree with that suggestion. In response to the query as to whether he considered Shri Puri fit to hold the post of such vast importance to the economy of the country, Shri Subramaniam stated that "taking into account the vast fields which the Reserve Bank of India has to deal with, I thought Puri was not the person who would fit in this job."

7.32 It would be relevant at this stage to refer to a letter dated February 27, 1978 from Shri K. R. Puri addressed to the Secretary to the Commission, enclosing thereto a note of the same date and copies of certain Degree, Certificates, etc. In the note dated February 2, 1978 Shri Puri has referred to newspaper reports of the evidence tendered before the Commission by Shri C. Subramaniam. Evidence was tendered by him in this case on October 1, 1977 and presumably reports in this regard must have appeared in newspapers on the next day, namely, October 2, 1977. Shri Puri has said, *inter alia*, in this note as under :—

"Deposing before the Commission, Mr. C. Subramaniam has given the main reason for not considering me fit for appointment as Governor of the Reserve Bank of India that I was an ordinary graduate and as such lacked adequate background."

7.33 Shri Subramaniam's statement that Shri Puri is an ordinary graduate and as such lacks an adequate academic background was not made in the testimony before the Commission but made a note submitted by him to the then Prime Minister on July 27, 1975, presumably after verifying the records in this regard which should have been available to the Finance

Minister. It is seen from the papers since submitted by Shri Puri that he had obtained the Degree of Bachelor of Arts with Honours in English in the examination held by the University of Punjab in the year 1939 and that he was placed in the Second Division. It is further seen that he had also obtained the Degree of the Bachelor of Laws of the same University in the examination held in May, 1943 and that he was placed in the Second Division. Another certificate indicates that he was successful in the House Examination of the F.E.L. Class held in December 1941 and that he stood First in the order of merit in the subject of Mercantile Law. It is not clear how Shri Subramaniam's statement that Shri K. R. Puri is an ordinary graduate can be considered as erroneous, especially as the then Finance Minister was mentioning it in the context of the specialised knowledge and experience required for the post of the Governor of the Reserve Bank, which he had briefly indicated in the earlier part of the same note.

7.34 As regards Shri C. Subramaniam's testimony before the Commission, insofar as it related to Shri Puri's academic background and his competence in his capacity as Chairman of L.I.C., I cannot do better than quote verbatim from the relevant portion of the proceedings :—

"Witness : As a matter of fact, Mr. Puri was initially in my Ministry and he was holding the post of Chairman and Managing Director of the L.I.C. As an officer in the L.I.C., no doubt, he was quite competent. But taking into account the vast fields which the Reserve Bank of India has to deal with, I thought Puri was not the person who would fit in to this job.

Chairman : Did he have any academic qualifications which might have otherwise made him suitable ?

Witness : I had made it quite clear in my memo to the Prime Minister that apart from his academic qualifications, which was secondary, in regard to his experience, particularly, in the national sphere.....

Chairman : You mentioned that he was an ordinary graduate.

Witness : That is true. Even an ordinary graduate may acquire experience later on. Both the things have to be taken into consideration, his initial academic qualifications and later on, whether he had acquired any expertise in these fields. After all, this is the starting point.

Chairman : I am coming to that.

Witness : Taking both the things into consideration, I was definitely of the opinion that Mr. Puri may not be fit for the job."

7.35 To the Commission's query as to why he still fell in line with the suggestion that Shri Puri should be appointed, Shri Subramaniam replied that this matter

had gone on dragging for three months and that he had quite a number of discussions with the Prime Minister and also with the Secretary to the Prime Minister. In response to the query as to whether it means that the Prime Minister was insistent that Mr. Puri alone should be appointed, Shri Subramaniam replied—

"She said that Mr. K. R. Puri would be competent for the job and that he should be appointed."

Shri Subramaniam also stated that the then Prime Minister had told him that as Chairman of the Life Insurance Corporation of India, Shri Puri had to deal with "investments and various other things." "But in my view that was not quite relevant because the Reserve Bank of India deals with completely different problems of financial policy." In conclusion, Shri Subramaniam stated as under :

"Mr. Puri's appointment was restricted to one year. Generally it is not done. It is five year period. I think it was because of my objection so that his performance may be watched. So the period was restricted to one year."

7.36 Shri Puri's observation in his note dated February 27, 1978, referred to above, that on the expiry of his initial one year term, he was re-appointed in January 1976 for a further period of two years does not affect in any manner Shri Subramaniam's statement regarding his initial objections to the proposal.

7.37 Smt. Gandhi has not filed any statement in this case as was required to be done under Rule 5(2) (a) of the Commission of Inquiry (Central) Rules 1972, she had responded to the summons u/s 8B of the Act. But she refused to take the oath and tender evidence. From the facts on record, and the evidence of Shri C. Subramaniam in this case, it appears that the normal and established procedure in regard to the appointment of the Governor of the Reserve Bank of India was not followed and that the then Finance Minister Shri C. Subramaniam was virtually compelled to fall in line with the suggestion made by the then Prime Minister Smt. Gandhi. This was yet another case of subversion of established administrative procedure and convention by Smt. Indira Gandhi as the P.M.

4. *Subversion of lawful processes and well-established conventions and deviation from administrative procedures and practices in the appointment of Shri T. R. Varadachary as Chairman of the State Bank of India.*

7.38 On June 24, 1976, the then Minister of Revenue and Banking Shri Pranab Mukherjee sent the following secret note to the then Prime Minister :

"Subject : Shri R. K. Talwar, Chairman, State Bank of India—Term of appointment.

"Shri R. K. Talwar was appointed Chairman, State Bank of India with effect from March 1, 1969 for a term of 5 years. The term was extended by a further period of 3 years and comes to an end on February 28, 1977.

It has been the Government's intention that his term of appointment should be curtailed and he be asked to vacate office. As the State Bank of India Act provided only for removal from office which could be only as a punishment, the State Bank of India Act has been recently amended to provide for the Government, if it so chooses, to terminate the term by giving 3 months' notice or 3 months' salary and allowances in lieu thereof. Accordingly, it is proposed to terminate, in terms of Sub-section (IA) of section 20 of the Act, the term of appointment of Shri Talwar as at the close of business on 30th June, 1976 and pay him 3 months' salary and allowances in lieu of notice.

"In the vacancy caused, it is proposed that Shri T. R. Varadachary at present Managing Director, State Bank of India, be appointed as Chairman with effect from 1st July, 1976 till February 28, 1977, i.e. till such time as he would have served as Managing Director of State Bank of India.

Sd/- Pranab Mukherjee,
Minister of Revenue and Banking

Prime Minister of India

U.O. No. 350(S)/MRB/76 dated 24-6-1976"

7.39 The Secretary to the Prime Minister endorsed on the note on July 21, 1976, that "PM has approved", and returned it to Shri Pranab Mukherjee. Thereupon, Shri Pranab Mukherjee recorded a note order on July 24, 1976 to the effect that the order (appointing Shri T. R. Varadachary as Chairman of the State Bank of India) may be effective from August 4, 1976. Pursuant to this order, the Department of Banking issued a notification dated July 30, 1976 appointing Shri Varadachary as the Chairman of the State Bank for the period commencing from August 4, 1976 and ending with February 28, 1977. A copy of this notification was also endorsed to the Establishment Officer in the Department of Personnel and Administrative Reforms, Government of India.

7.40 Under the relevant Rules framed for the Transaction of the Business of the Government of India, the appointment of Chairman of the State Bank of India requires the approval of the Appointments Committee of the Cabinet. Sub-clause (a) of sub-section (1) of section 19 of the State Bank of India Act, 1955, reads as under :—

"19(1) The Central Board shall consist of the following, namely :—

(a) a Chairman and a Vice-Chairman to be appointed by the Central Government in consultation with the Reserve Bank."

Clause (b) of section 2 of the Act defines the Central Board to mean the Central Board of Directors of the State Bank and Clause (bb) defines the Chairman as meaning the Chairman of the Central Board. It would be seen from the above that the Chairman of the State Bank of India is to be appointed by the Central Government in consultation with the Reserve Bank of India.

7.41 In November, 1975, the then Chairman of the State Bank of India, Shri R. K. Talwar, had forwarded a note to Shri Varadachary asking for his comments on certain matters indicative of improprieties on the part of Shri Varadachary. The then Chairman had also sought to bring to the notice of the Central Board of the State Bank for discussion at its meeting which was to be held on March 30, 1976, a memorandum dealing with the alleged improprieties on Shri Varadachary's part. It is, however, seen that as desired by Shri N. C. Sen Gupta, the then Secretary, Department of Banking and Shri P. K. Mukherjee, the then Minister for Revenue and Banking, Shri M. C. Balasubramaniam, the then Additional Secretary in the Department of Banking, who was also a Member of the Central Board of the State Bank met Shri Talwar and advised him not to bring the subject for discussion before the Board. Accordingly, the matter was not brought before the Board at its meeting on March 30, 1976. There is, however, nothing on record to show that the Government examined the matter further and satisfied itself, before appointing Shri Varadachary as the Chairman of the State Bank, that he was not guilty of any impropriety as alleged by the then Chairman.

7.42 As already mentioned above, a copy of the notification issued by the Department of Banking on July 30, 1976 appointing Shri Varadachary as Chairman of the State Bank of India with effect from August 4, 1976, was endorsed to the Establishment Officer in the Department of Personnel and Administrative Reforms. This appears to be the only communication to the Secretariat of the Appointments Committee of the Cabinet in regard to this appointment, which required the approval of the Committee.

7.43 In the course of his evidence before the Commission Shri N. C. Sen Gupta, former Secretary, Department of Banking had indicated that the introduction of Sub-section (IA) in section 20 of the State Bank of India Act, 1955, by means of an amendment thereto in 1976 was to enable the Government to place the State Bank on the same footing as other nationalised Banks and that the amendment was not intended to enable the Government to relieve Shri R. K. Talwar of his office as Chairman of the State Bank of India. However, the first paragraph of Shri Pranab Mukherjee's note dated June 24, 1976, referred to above, does not appear to bear out Shri Sen Gupta's testimony. It is also seen from a note recorded by Shri J. C. Roy, an officer in the Department of Banking on August 4, 1976, that according to the order of the then Minister for Revenue and Banking, Shri R. K. Talwar was to be served with a notice for termination of his term of office under section 20(IA) of the State Bank of India Act and further that the notice and procedure for serving it had been finalised in consultation with the Ministry of Law.

7.44 Regarding consultation with the Reserve Bank Shri Sen Gupta stated before the Commission that he had consulted the Governor of the Reserve Bank orally and in this connection he referred to a letter written by him to the Governor on July 30, 1976. The only letter that Shri Sen Gupta had written to the Governor of the Reserve Bank in this regard on July 30, 1976

was to the effect that on a request made by Shri R. K. Talwar he had been sanctioned leave with effect from August 4, 1976 to February 28, 1977. There is no mention in that letter of the name of the successor to be appointed to Shri R. K. Talwar, much less an indication of any consultation in this regard. The only reference in that letter to a successor to Shri R. K. Talwar is as under :

"We are separately issuing Government notification regarding appointment of his successor."

When faced with this, Shri Sen Gupta, in the course of his evidence before the Commission, said "this was really an ex-post-facto consultation." Needless to add, the consultation statutorily required could certainly not be ex-post-facto, apart from the fact that there is no evidence even of the so-called ex-post-facto consultation.

7.45 Shri Pranab Mukherjee who had been requested to assist the Commission at the preliminary stage of its inquiry had done so, but he indicated that before answering any questions put to him he would like to make a submission in regard to the propriety of doing so. He thereafter said that the oath of office taken by him at the time of entering upon office precludes him from answering those questions which involve matters which came under his consideration or within his knowledge as a Minister. However, the Commission gave the ruling that by giving any information before it, Shri Mukherjee would not be violating either the provisions of the Official Secrets Act or the oath of office taken by him. Thereafter, Shri Mukherjee proceeded to answer the queries put to him by the Commission. When specifically asked whether the Reserve Bank was consulted as required by section 19 of the State Bank of India Act, Shri Mukherjee stated as under :—

"Sir, when the trouble of this nature started, I kept the Reserve Bank Governor informed and I had some discussions. But I do not know whether any such discussion is reported anywhere in the files. But I had some discussions with him because he was also involved in the whole process. But I cannot tell exactly whether before processing the appointment his formal consultation was obtained or not."

In this case again it was Shri Mukherjee's claim that the consultation was oral, that he spoke not on one occasion but on more than one occasion and further that he did not recollect whether any record of such consultation was maintained. Nor could he indicate the date of such consultation. In response to the Commission's inquiry as to whether he thought that he should either have recorded a note regarding the consultation with the Reserve Bank or at least have asked someone else in his office like the Secretary to make a note that the Governor of the Reserve Bank had been consulted and that he is of the opinion that Shri Varadachary should be appointed as Chairman of the State Bank, Shri Mukherjee said :—

"Sir, in fact, when I went through the file to refresh my memory there was no such noting."

The Commission has been shown a number of instances where in view of urgency of the matter or for some other reason consultation with the Reserve Bank either when statutorily required or otherwise has been oral but in all such instances the fact of consultation is seen to have been recorded contemporaneously and invariably backed up by correspondence indicating such oral consultation.

In the light of the consistent practice and in the light of the nature of the oral testimony of Shri Sen Gupta and Shri Mukherjee, the Commission is of the view that there was no consultation with the Reserve Bank in this case, as was required in terms of sub-clause (a) of sub-section (I) of section 19 of the State Bank of India, 1955.

7.46 On April 30, 1977, Shri T. R. Varadachary wrote a letter to the Prime Minister expressing his shock and surprise at being asked to hand over charge as Chairman of the State Bank of India with effect from that day. He enclosed thereto a note dated April 21, 1977, which he had sent to the then Secretary, Department of Revenue and Banking. The note, according to him, clarified his position in regard to various unfounded allegations made against him in sections of the press and otherwise by word of mouth. Certain extracts of the note had been furnished in the summary presented before the Commission. It would appear therefrom that as per his own statement, Shri Varadachary had met Shri Sanjay Gandhi at the instance of Shri Pranab Mukherjee "to lodge" his "claim" for appointment as Chairman of the State Bank of India and that he had several other meetings with Shri Sanjay Gandhi most of them on the suggestion or direction of Shri Pranab Mukherjee, during which he had consulted or taken instructions from Shri Sanjay Gandhi on various matters regarding the functioning of the State Bank including staff matters.

7.47 In response to detailed inquiries by the Commission in this regard Shri Pranab Mukherjee denied that he had ever asked Shri Varadachary to see Shri Sanjay Gandhi in relation to his appointment or other matters relating to the State Bank although he did confirm the meeting which Shri Varadachary had with the Chairman of the Delhi Small Industries Development Corporation at Shri Mukherjee's residence. He also broadly confirmed Shri Varadachary's statements in relation to most of the matters except in as far as they related to references to Shri Sanjay Gandhi. He was specifically asked by the Commission as to whether he could furnish any reason why Shri Varadachary should, in a letter addressed to the present Prime Minister, make these statements on the eve of his handing over charge to another officer, and whether Shri Mukherjee could suggest any reason why Shri Varadachary should state therein something which is not true. All that Shri Mukherjee had to say was "Sir, I cannot say anything on it."

7.48 The Commission, however, sees no reason to disbelieve the facts as set out in Shri Varadachary's note dated April 21, 1977, enclosed to his letter dated April 30, 1977, to the Prime Minister although it was

not possible to examine Shri Varadachary as the Commission was informed that he was abroad and, therefore, not readily available.

7.49 Although Shri Pranab Mukherjee assisted the Commission at the preliminary stage of its fact finding inquiry, he did not file any statement in this case as was required to be done under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972. He had responded to the summons under section 8B of the Commissions of Inquiry Act, 1952. But he refused to take oath and tender evidence. However, from the facts on record and the evidence analysed above, it appears that the normal established procedure in regard to the appointment of the Chairman of the State Bank of India was not followed in this case and further that it was not in accordance with the provisions of the State Bank of India Act, 1955, which made consultation with the Reserve Bank of India a condition precedent to the appointment of the Chairman by the Central Government. The Commission is of the view that considerations other than strictly professional and totally extraneous have unfortunately been allowed to operate in arriving at the decision to appoint Shri Varadachary. Shri Pranab Mukherjee has violated established administrative conventions and procedures and misused his position in the appointment of Shri Varadachary.

5. *Deviation from established procedure and irregularities in the appointment of Shri T. R. Tuli as Chairman and Managing Director of Punjab National Bank.*

7.50 Shri P. L. Tandon's term as Chairman and Managing Director of the Punjab National Bank was due to expire on 31-7-75. Under sub-clause (a) of Clause 3, read with sub-clause (1) of Clause 8, of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, appointment of his successor was to be made by the Central Government after consultation with the Reserve Bank of India. Accordingly on May 12, 1975 the then Secretary, Department of Banking wrote to the Governor Reserve Bank, *inter alia*, seeking the Reserve Bank's views in this regard. In his reply dated May 14, 1975, the Governor of the Reserve Bank wrote that the Reserve Bank thinks that Shri Tandon's recommendation in favour of Shri O. P. Gupta is very appropriate. He added that in fact the Bank would recommend that Shri O. P. Gupta be considered very seriously for the succession straightaway. The then Finance Minister agreed with Reserve Bank's recommendation that Shri O. P. Gupta who was then the Deputy General Manager of the Punjab National Bank should be appointed as its Chairman and Managing Director. Accordingly, with the approval of the Finance Minister, the Department of Banking submitted a note to the Appointments Committee of the Cabinet on the May 13, 1975 seeking the Appointments Committee's approval to Mr. O. P. Gupta's appointment. The proposal as approved by the Finance Minister was submitted by Shri U. C. Aggarwal Establishment Officer, on June 4, 1975, for approval to the other two Members of the Appointments Committee, namely the Home Minister and the

Prime Minister, through the Cabinet Secretary. The Cabinet Secretary forwarded it to the Home Minister on June 5, 1975. Shri K. Brahmananda Reddy, the then Home Minister, approved it on June 7, 1975 and passed on the papers to the Prime Minister. This proposal lay pending with the Prime Minister for a long time and no decision was conveyed to the then Department of Banking until after the Prime Minister approved the appointment of Shri T. R. Tuli to the same post in the following circumstances.

7.51 On July 15, 1975, Shri M. G. Balasubramanian, the then Addl. Secretary in the Department of Banking, recorded the following minute on the relevant file of the Department of Banking :

"The file has been returned from F.M.'s. office for submission of revised proposals. I have spoken to Governor, RBI.

He recorded the following further minute on July 21, 1975 :

"I enquired of the Governor, when I met him in Calcutta on 19th July, 1975, about RBI's report to us regarding Government's proposal to appoint Mr. T. R. Tuli of New Bank of India as Chairman, Punjab National Bank about which I had spoken to him over the phone on 15th July, 1975. Governor told me that he was under the impression that I would be writing to him about this to enable RBI to send a reply. When I told him that my understanding was different, he promised to write to me after he reaches Bombay on 21st evening.

"The Chairman and Managing Director is to be appointed by Government after consultation with the RBI and RBI has been consulted. please put up the file for F.M.'s orders *today itself*, whether he should send a revised note to ACC or issue the orders and inform the E.O. to keep the ACC apprised."

7.52 Accordingly, a note was recorded on the same day, namely July 21, 1975, by Shri D. M. Sukthankar, Director in the Department of Banking, seeking the Finance Minister's order, *inter alia*, as to whether a notification appointing Shri T. R. Tuli as Chairman and Managing Director of the Punjab National Bank may be issued straightaway and the Establishment Officer requested to keep the Appointments Committee of the Cabinet apprised or whether a revised note may be sent to the Appointments Committee of the Cabinet for obtaining their approval to the revised proposal. Shri Sukthankar's note starts by saying that the Governor, Reserve Bank of India, has been consulted by the Additional Secretary regarding the Government's decision to appoint Shri T. R. Tuli, Chairman, New Bank of India Ltd. (a Bank in the Private Sector) as Chairman and Managing Director of the Punjab National Bank with effect from August 1, 1975. Significantly it does not state what the views of the Reserve Bank in this regard were. The reason for this omission will be clear presently.

7.53 Shri Subramaniam minuted on July 22, 1975 that Shri Tuli may be appointed straightaway for a period of one year and sought the then Prime Minister's approval to this. The then Prime Minister approved the proposal on July 24, 1975 and accordingly Shri Tuli was appointed as Chairman and Managing Director of the Punjab National Bank in terms of notification dated July 31, 1975 issued in this regard. Thereafter, on August 5, 1975, Shri M. G. Balasubramaniam wrote a letter to Shri U. C. Agarwal, the Establishment Officer referring to the earlier note of the then Department of Banking regarding the appointment of a new incumbent to the post of Chairman and Managing Director of the Punjab National Bank and informed him that it has since been decided with the approval of the Prime Minister to appoint Shri T. R. Tuli to that post for a period of one year with effect from August 1, 1975. The letter also indicated that the Home Minister has also been kept suitably informed by the Finance Minister's Office and went on to suggest that the Establishment Officer may perhaps consider recording the information suitably in the office of the Appointments Committee of the Cabinet.

7.54 The Reserve Bank's views on the Government's proposal to appoint Shri T. R. Tuli of the New Bank of India about which Shri M. G. Balasubramaniam had spoken over the telephone to the then Governor of Reserve Bank on July 15, 1975 were contained in the Governor's letter dated July 22, 1975 (i.e. one day after Shri Sukthankar's note referred to at paragraph 3 above was submitted to the Finance Minister) and was received in the Department of Banking on the July 23, 1975. This letter gives the unmistakable impression that the Reserve Bank was not very enthusiastic about the Government's proposal in this regard. In his testimony before the Commission, Shri C. Subramaniam stated that he would "take the Reserve Bank's report as neutral."

7.55 In response to a query as to why the proposal for the appointment of Shri O. P. Gupta which the Finance Minister had made on the recommendation of the Reserve Bank was not carried out, Shri Subramaniam stated that while this was being processed, the Prime Minister mentioned that Shri Tuli's name should also be considered for the post. He also indicated in the course of his testimony that he did not know Shri Tuli before, and comparatively speaking, Punjab National Bank was very much bigger than the New Bank of India. When asked whether the Prime Minister suggested that Shri Tuli should be appointed, Shri Subramaniam, replied "yes".

7.56 As already indicated in paragraph 4 above, Smt. Gandhi approved the proposal to appoint Shri T. R. Tuli straightaway as Chairman and Managing Director of the Punjab National Bank on July 24, 1975. Thereafter, on the very next day, namely, July 25, 1975, the Original proposal submitted to the Prime Minister early in June 1975 to appoint Shri O. P. Gupta to this post was returned by Shri Ramachandran, Joint Secretary to the Prime Minister with the following remark :

"It was learnt that Finance Minister was not proceeding with this proposal. He had separately submitted alternative proposals to PM.

PM has approved Finance Minister's proposal to appoint Shri T. R. Tuli, at present Chairman of New Bank of India Ltd., as Chairman and MD of PNB for a period of one year w.e.f. August 1, 1975. Finance Ministry will be sending a formal note to E.O. giving details."

This remark, to say the least, is intriguing in the light of Shri C. Subramaniam's evidence that Shri Tuli's name was suggested by none other than the then Prime Minister herself.

7.57 Smt. Gandhi has not filed any statement in this case, as was required to be done under Rule 5(2)(a) of the Commission of Inquiry (Central) Rules, 1972. She had responded to the summons under section 8B of the Commissions of Inquiry Act, 1952, but had refused to take oath and declined to give evidence. However, it is clear from the foregoing facts, that in this case, the Finance Minister had agreed with the recommendation of the Reserve Bank that Shri O. P. Gupta may be appointed as Chairman and Managing Director of the Punjab National Bank. The proposal in this regard, approved by the Finance Minister and the Home Minister, had been submitted to Smt. Gandhi in her capacity as one of the members of the Appointments Committee of the Cabinet. When this proposal was pending with her for her concurrence, she suggested the name of Shri T. R. Tuli for the post and within a very short time thereafter Shri Tuli's appointment to this post was approved. It is also seen that before arriving at this decision to appoint the Chairman of a comparatively small bank in the Private Sector to the senior-most position in one of the biggest Public Sector banks in the country, no effort was made to consider the suitability for this post, of senior Managers within the public sector banking system itself as had been done in several other instances.

7.58 No reason whatsoever has been given for departing from the recommendation of the Reserve Bank which has intimate knowledge of the working of all the Banks in the country and is, therefore, in a position to judge the comparative merits of the various officers for top positions in the Banking Sector. This becomes even more striking since Reserve Bank's recommendation had been found acceptable by the Finance Minister himself and by the Home Minister. If the then Prime Minister had any serious difference of opinion in this regard, there is no reason why the matter could not have been discussed by her with the two other members of the Appointments Committee or in the alternative why she could not record her views in this regard on the file submitted to her, instead of virtually directing Shri Subramaniam to submit a revised proposal in favour of a person of her choice.

7.59 Under the circumstances, the Commission is of the view that this is yet another instance where the then Finance Minister Shri C. Subramaniam was virtually compelled to fall in line with the suggestion made by the then Prime Minister, Smt. Gandhi and that such compulsion amounted to abuse of authority by the former Prime Minister. It clearly resulted in subversion of well-established conventions.

6. *Deviation from the established procedure for the selection of officers for top level executive post in Public Sector Undertakings, in the case of Lt. Gen. J. T. Satarawala, as Chairman-cum-Managing Director, India Tourism and Development Corporation*

7.60 At the request of the Minister for Tourism and Civil Aviation, the Public Enterprises Selection Board (PESB) recommended suitable names for the post of Chairman-cum-Managing Director of India Tourism Development Corporation. According to Resolution No. 5(1)/74 of Bureau of Public Enterprises dated August 30, 1974, it was the responsibility of the Board to select persons for posts, such as, full-time Chairman, part-time Chairman and Managing Director for all Public Sector Corporations.

7.61 The P.E.S.B. met on July 26, 1976 and suggested the names of Sh. Ajit Singh and Shri B. S. Das, after considering eight names amongst whom was the name of Lt. Gen. J. T. Satarawala. The recommendation of the P.E.S.B. was communicated to the Ministry on August 9, 1976 and a draft letter requesting the Establishment Officer to obtain the approval of the Appointments Committee was prepared by the Ministry. The Secretary Shri N. K. Mukarjee agreed to the proposal and marked the file to the Minister for approval. The Minister then desired that the Minister for State may also see the proposal. The Minister for State Shri Surindra Pal Singh suggested the name of Lt. Gen. J. T. Satarawala. He stated that in his opinion to bring about a change at the topmost level in I.T.D.C., would be detrimental to the national interest. The Minister for State commented that Lt. Gen. Satarawala was keeping good physical condition and was quite capable of shouldering the onerous and heavy responsibility of looking after the I.T.D.C.

7.62 Shri Raj Bahadur agreed with the Minister of State, and, accordingly, a revised draft was prepared. It was dealt with by the Joint Secretary in the absence of the Secretary. The Appointments Committee of the Cabinet approved the appointment of Lt. Gen. Satarawala, who had been considered by the P.E.S.B. but not recommended for appointment.

7.63 It is not a healthy convention to post an officer as a top level executive, who was earlier interviewed and not considered suitable by the Public Enterprises Selection Board to the exclusion of the names in the panel recommended by the P.E.S.B. The better course would have been to request the P.E.S.B., to suggest a fresh panel of names. By ignoring the recommendations of a statutory body, the Government was making an inroad into the relevance and respectability of such a body.

7. *Deviation from the established procedure for the selection of officers for top level executive post in Public Sector Undertakings—in the case of Air Marshal H. C. Dewan, as Chairman, International Airport Authority of India*

7.64 On the completion of the tenure of Air Marshal Y. V. Malse, Shri B. S. Das was appointed to look after the current duties of the post of Chairman in

addition to his own duties as wholetime Member, International Airports Authority of India. The Ministry forwarded to the Public Enterprises Selection Board the names of Shri B. S. Das and two others.

7.65 The matter was considered by the Public Enterprises Selection Board at its meeting held on December 4, 1975. After considering the suitability of the candidates possessing the requisite qualifications, the P.E.S.B. listed five persons, amongst whom the first was Shri B. S. Das.

7.66 The Board recommended Shri B. S. Das as the most suitable person for appointment as Chairman, I.A.A.I. The recommendation of the P.E.S.B. was accepted by the then Minister for Tourism and Civil Aviation and the Establishment Officer was approached on 24th December, 1975 to seek approval of the Appointments Committee of the Cabinet for appointment of Shri B. S. Das as Chairman, I.A.A.I.

7.67 While seeking the approval of the A.C.C. for appointment of Shri Das, the Ministry sent only his C.R. dossiers and particulars of none of the other candidates considered by the P.E.S.B. were forwarded.

7.68 The Appointments Committee of the Cabinet, however, chose to disagree with the recommendation of the P.E.S.B. and did not approve the proposal to the appointment of Shri B. S. Das as Chairman. Instead, the Committee desired that Air Marshal H. C. Dewan be appointed to the post. No apparent reason for deviating from the procedure of selection of top level executive officer was given. Air Marshal H. C. Dewan had been interviewed by the P.E.S.B. but was not found suitable. The then Minister of Tourism and Civil Aviation choose to ignore the Secretary's noting that there was disparity of criteria as between P.E.S.B., and A.C.C., particularly because Air Marshal Dewan had been considered but was not recommended by the P.E.S.B. The then Minister, however, directed that the decision of the A.C.C. should be complied with.

7.69 If the person recommended by the P.E.S.B., in the present case was not acceptable for any particular reason, the appointing authorities could well have asked for a fresh panel of suitable candidates. By not doing this and appointing a person who had been interviewed by the P.E.S.B., and not found suitable, the Government has exposed itself to the charge of, to say the least, injecting into the selection process considerations which may well be extraneous to the requirements of the job. Such a practice does not add to the credibility of established institutions; rather it impaires it.

8. *Misuse of powers and institution of false criminal complaints against four senior officials by the C.B.I. at the instance of Smt. Indira Gandhi*

7.70 A question asked by Shri Jyotirmoy Basu in the Parliament seeking to elicit information from the Government concerning import of machinery by Maruti Private Limited, was listed for reply on April 16, 1975. Four officers of the Ministries, Shri Krishnaswamy,

Deputy Secretary, Heavy Industries; Shri A. S. Rajan, Development Officer, DGTD; and Shri L. R. Cavale, Chief Marketing Manager, P.E.C.; and Shri P. S. Bhatnagar, Deputy Marketing Manager, P.E.C., were collecting such relevant information as would enable the Minister concerned to reply to the question.

7.71 In the process of gathering information, Shri Krishnaswamy asked Shri Khosla, an officer of DGTD to contact the Manager of Maruti Private Limited and obtain certain information. Shri Khosla accompanied by Shri Bharij visited the factory of Maruti Limited on April 10, 1975, but no information was supplied to them by the Management of Maruti Limited.

7.72 Some time between April 9 and 14, 1975, Shri A. S. Rajan and Shri P. S. Bhatnagar contacted M/s. Batliboi and Company on telephone to elicit certain information in relation to the question, which was to be answered in the Parliament. On April 14, 1975, Shri R. K. Dhawan, Additional Private Secretary to the then Prime Minister, contacted Shri T. A. Pai, Minister for Heavy Industries on telephone and complained against the conduct of the officers of his Ministry, who were collecting information from M/s. Batliboi and Company. On April 15, 1975, Shri R. K. Dhawan spoke to Shri A. S. Rajan and Shri P. S. Bhatnagar on telephone and directed Shri P. S. Bhatnagar to desist from collecting information relating to the import of machinery by Maruti Private Limited. Shri Cavale has corroborated Shri Bhatnagar's statement. He himself received a phone call the same day from Shri N. K. Singh, Special Assistant to the Commerce Minister wanting to know what transpired in the office regarding the Parliament Question on Maruti.

7.73 Shri T. A. Pai was personally called by the Prime Minister to meet her at her residence. Shri Pai met the Prime Minister. According to his recollection it was either on April 14 or 15, 1975. He has stated that he found Smt. Gandhi "completely upset and furious". She told Shri Pai that the Management of M/s. Batliboi and Company was being harassed by the officers of his Ministry. In the presence of Shri Pai, Smt. Gandhi called Shri Dhawan and directed him to contact Shri D. Sen, Director, CBI and ask him to start inquiries into the conduct of these officers and raid their houses. She also asked Shri Dhawan to send for Shri D. Sen.

7.74 Smt. Gandhi also called Prof. Dr. P. Chattopadhyaya, the then Minister of Commerce, at her residence on April 15, 1975 and directed that immediate inquiry should be started against Shri Bhatnagar because he had caused harassment to certain parties. Shri Chattopadhyaya prepared a note on April 15, 1975, extract from which is reproduced below :—

"A specific case was brought to my notice today where Shri P. S. Bhatnagar, Deputy Marketing Manager, P.E.C. kept the representatives of a firm waiting for an unduly long time and coerced them to part with certain information. The manner in which the information was sought to be obtained, was unbecoming of a public servant. I would like

the Chairman, P.E.C. to take disciplinary action against the officers."

Professor Chattopadhyaya in his evidence before the Commission has stated that he discussed the matter with the P.E.C. officers and informed them of what he had learnt from the Prime Minister and ordered that disciplinary proceedings should be commenced against Shri Bhatnagar. According to Prof. Chattopadhyaya he did not apply his mind with regard to the veracity of the information since it had come from the Prime Minister personally and he thought that the Prime Minister must have full information and must have satisfied herself about the involvement of Shri Bhatnagar. Shri Chattopadhyaya has clearly stated that he thought that the Prime Minister must have applied her mind, especially because neither before that incident nor thereafter had she ever complained about the conduct of any officer and that was why he directed the action as suggested by her.

7.75 Pursuant to the order made by Prof. Chattopadhyaya, Shri Bhatnagar was ordered to be suspended and intimation of the order was given to him some time at about 10 p.m. that night—i.e. April 15, 1975.

7.76 Shri T. A. Pai, however, had called his officers earlier and had satisfied himself that there was no substance in the allegations made against his officers to the effect that they were responsible for harassment of M/s. Batliboi and Company. Shri Pai had also contacted the Manager of M/s. Batliboi and satisfied himself that the allegations that there was ill-treatment of the employees of M/s. Batliboi Limited was without substance.

7.77 The orders of Smt. Gandhi were, however, communicated by Shri Dhawan to Shri Sen, Director of CBI. Shri Sen called the Deputy Director, Intelligence Cell, Shri Rajpal on April 15, 1975 evening and asked him to verify the information against Shri Krishnaswami, Shri Rajan and Shri Bhatnagar. Shri Rajpal was informed by Shri Sen that all these officers were corrupt and had assets disproportionate to their known sources of income. Shri Sen directed Shri Rajpal to collect information against them immediately and to furnish a report within five days. On April 16, 1975, Shri Rajpal directed his subordinate officers to collect the requisite information and also to mount surveillance against these three officers.

7.78 Before any verification could be made, Shri Sen directed Shri Rajpal on April 16, 1975 to send to him whatever information was available against those officers. The relevant files were, accordingly, submitted by Shri Rajpal to Shri Sen. Shri Rajpal, however, did not recommend any action against these officers, since the verification had just started. Shri Sen, however, ordered the registration of regular cases against Shri Bhatnagar and Shri Rajan. On April 17, 1975, cases were formally registered against Shri Bhatnagar and Shri Rajan under the Prevention of Corruption Act for being in possession of assets disproportionate to their known means. On April 18, 1975, their residential premises were searched by the CBI officers.

7.79 The S.T.C. authorities, who had control over Shri Bhatnagar and Shri L. R. Cavale were also galvanised into action in pursuance of the note sent by Shri D. P. Chattopadhyaya. Shri Bhatnagar was served with the suspension order at his residence on the night of April 15, 1975. Shri Cavale was transferred to Madras from Delhi. This order was initially dated April 16, 1975. Then this order was withdrawn and a fresh order dated April 15, 1975, with identical contents was again served upon Shri Cavale. The fact that the date of the transfer order was changed from April 16 to 15 is significant insofar as the authorities were anxious to make it appear that there was no delay in the execution of the orders. Shri Cavale did not accept the transfer meekly and protested against the order of the Chairman, S.T.C.

7.80 Shri P. J. Fernandes, Director General, Bureau of Public Enterprises, took up the matter relating to the transfer of Shri Cavale with the Chairman of S.T.C. Shri P. J. Fernandes was informed by the Chairman that he was helpless and that he was acting under superior instructions. Shri Cavale, then personally met the Chairman, who also advised him that in order to avoid further "complications and possible harassment", he should accept the order of transfer and proceed to Madras. Shri Cavale was unwilling to accept the advice. The CBI started verification on him on April 21, 1975 and he was placed under surveillance. The inquiry against Shri Cavale did not reveal any incriminating material against him justifying registration of a case against him. But on April 27, 1975, Shri Sen ordered registration of a preliminary inquiry. Shri Sen also ordered that copies of the report of the preliminary inquiry should not be sent to the usual recipients. The Intelligence Cell was also asked to collect further information so that the preliminary inquiry could be converted into a regular case. This clearly implied that the preliminary inquiry was inevitably to be converted into a regular case. The Intelligence Cell was, however, unable to collect any reliable material on which a complaint could be registered against Shri Cavale.

7.81 According to Shri K. Vijayan, S.P., he was pressurised by Shri A. B. Chaudhary, Joint Director to write a note suggesting that the house of Shri Cavale should be searched. Accordingly, Shri Vijayan recorded a note, and on the basis of his note the house of Shri Cavale was searched on May 3, 1975; and a regular case was registered against Shri Cavale for investigation under the Prevention of Corruption Act.

7.82 The harassment of Shri Cavale did not, however, stop at that stage. He was asked by the Chairman of the S.T.C. to resign from his office. Shri Cavale was informed that if he continued to remain in the office, he may get involved in more trouble and harassment may increase. Apparently, under pressure, Shri Cavale submitted his resignation, which was promptly accepted.

7.83 The residential premises of Shri Krishnaswamy were searched on May 3, 1975. It appears that even though there were not sufficient materials to warrant any action against Shri Krishnaswamy. On April 27,

1975 Shri Sen desired that a preliminary inquiry should be registered against him. This was in spite of the fact that Shri Rajpal was bold enough to point out to Shri D. Sen repeatedly that Shri Krishnaswamy had a good reputation, his standard of living was moderate and that he came from a well-off family. Here also it was directed that the registration report should not be sent to the usual addresses, ostensibly, to maintain secrecy. On April 27, 1975, the Joint Director, Shri Chaudhary, indicated that after more information was available, the preliminary inquiry would be converted into a regular case. The case was, accordingly, registered on May 2, 1975 and the house of Shri Krishnaswamy was searched on May 3, 1975. Shri Krishnaswamy, who belonged to the Railway Service and was on deputation with the Ministry of Industries, proceeded on August 18, 1975, on four months' leave, in view of his continued harassment. This leave was extended on half-pay. In February, 1976 Shri Krishnaswamy was reverted to his parent cadre in the Railways. Even thereafter the CBI apparently tried several methods to scrutinise all the files, which Shri Krishnaswamy had dealt with in the performance of his duties in the Industries Ministry. Nothing incriminating was found against him. A case under the Excise Act was instituted by the Delhi Police at the instance of the CBI for alleged possession of liquor beyond the permissible limit discovered during the search of the residence of Shri Krishnaswamy.

7.84 The trial court did not find Shri Krishnaswamy guilty of any violation and acquitted him on March 4, 1977.

7.85 Wife of Shri Krishnaswamy was also harassed on certain allegations of being involved in some Foreign Exchange transactions. Even the bank locker of the father of Shri Krishnaswamy, a former officer of the Government of India in the Indian Audit and Accounts Service was searched at Madras.

7.86 In the proceedings taken against all the four officers, pursuant to which cases were started by the CBI practically nothing was detected and ultimately the proceedings under the Prevention of Corruption Act relating to the allegation of possessing assets disproportionate to the known sources of income were abandoned in all the cases.

7.87 All the four officers were examined by the Commission. At the preliminary stage the affidavit of Shri Rajan was read out as he was not available. He appeared at the second stage of the inquiry and he was examined by the Commission.

7.88 From the sequence of events it appears that after the four officers attempted to collect information in the performance of their duties between April 9 and 15, 1975, to enable the Minister concerned to reply to the Starred Question before the Parliament on April 16, 1975, Shri Dhawan spoke to Shri Rajan and Shri Bhatnagar on telephone and told Shri Bhatnagar not to make any inquiries concerning Maruti Private Limited. Either on April 14 or 15 and more probably on April 15, 1975, Shri T. A. Pai was summoned to the house of the Prime Minister and he was told by

the Prime Minister that the Management of M/s. Batliboi and Company was being harassed by the officers of his Ministry. To use the words of Shri Pai :

"She started talking about corruption, that my officers were talking about it and all that and they are corrupt themselves and what she said was not quite relevant. I could not make out because she was so furious and angry; that before I could answer, she had called Shri Dhawan and asked their houses are to be raided and Shri Sen to be sent for."

Shri T. A. Pai, however, on inquiries made by him found the charges baseless.

7.89 Prof. Chattopadhyaya, however, consulted his officers and action was taken against Shri Bhatnagar by suspending him forthwith.

7.90 Shri Dhawan has, in his evidence before the Commission, denied that Smt. Gandhi had told him anything regarding action to be taken against the officers of the Ministries of Heavy Industries and Commerce in the presence of Shri T. A. Pai; but he stated that he was directed by Smt. Gandhi to contact Shri D. Sen and to check the antecedents of the four officers concerned. Accordingly, Shri Dhawan contacted Shri D. Sen. According to Shri D. Sen, Shri Dhawan came to him personally in his office and gave the information. Shri Dhawan is not certain whether he talked to Shri Sen on telephone or personally. The version of Shri Dhawan, to quote his own words is :

"Chairman : Did you go, at the instance of the Prime Minister to Mr. Sen, or in your capacity without an order from the Prime Minister ?

Witness : No, I did not go in my own capacity. Since the complaints had come to the Prime Minister and the Prime Minister said that there are complaints about them. We should check about antecedents. So, I had passed on this information to Mr. D. Sen, that the Prime Minister had received complaints about these officers.

Chairman : Were you asked by the Prime Minister to go ?

Witness : Yes, I was given the names to pass on this information on to Mr. Sen only to check ?

Chairman : By the Prime Minister ?

Witness : Yes, by the Prime Minister.

Chairman : Did you tell Mr. D. Sen that the Prime Minister had given this information to you ?

Witness : Well, I do not remember at this stage that I think she must have definitely told me; otherwise I do not have any *locus standi* on my own to say."

7.91 Shri Sen maintained no record of the communication made by Shri Dhawan to him, but undisputably the machinery of the C.B.I. was moved into swift action against the four officers concerned. Shri Bhatnagar was immediately suspended and an order to that effect was served upon him the very same night. Secret inquiries were started against Shri Rajan and Shri Bhatnagar, and soon thereafter regular cases were registered against them.

7.92 The activities of the officers performed in the discharge of their duties were apparently not liked by Smt. Gandhi. The evidence does not disclose that there was any harassment of the officers of M/s. Batliboi and Company. Two representatives of M/s. Batliboi and Company have been examined, namely, Shri Adeshra and Shri Mathur and they have denied that anyone, either Shri Bhatnagar or Shri Rajan had come to the office of M/s. Batliboi and Company and they have also stated that it is not true that any representative of M/s. Batliboi and Company was insulted. They have also stated that they had made no complaint to anyone. Even though, there was, therefore, no case of any harassment of any officials of M/s. Batliboi and Company, stringent measures were apparently taken in reprisal against the action taken by Shri Bhatnagar and Shri Rajan in the performance of their duties. These officers were performing their duties and collecting information which had to be supplied to the Minister so as to enable him to answer the question before the Parliament on April 16, 1975. The houses of both these officers were searched without any reason and nothing incriminating had been found.

7.93 Regular cases under Prevention of Corruption Act were registered against Shri Krishnaswamy and Shri Cavale and their houses were raided by the CBI. Against Shri Krishnaswamy proceedings were taken under the Excise Act and also against his wife for an alleged infringement of the Foreign Exchange Regulation. Shri Krishnaswamy was also reverted to his parent Department and Shri Cavale was pressurised to submit his resignation when he showed his unwillingness to carry out the transfer orders. Shri Cavale's wife also lost her job on account of the steps taken against him.

7.94 Shri T. A. Pai sent a letter to the Prime Minister on or about May 5, 1975, after the searches of these officers had taken place and narrated the action which was taken against them. Smt. Gandhi, by her letter dated May 7, 1975, replied that in the course of the searches the CBI had found that the officers in question seemed to be in possession of assets disproportionate to their known sources of income. She in her letter had stated that the information against the officers had been received by the CBI while Shri Dhawan in his deposition before the Commission has stated that he had passed on the information to the CBI at the instance of Smt. Gandhi. She had also written in that letter that these officers did not seem entitled to any support. Smt. Gandhi had enclosed a note from the CBI which explained the position in some detail. But this assertion appears to have been proved unjustified. It may be sufficient to observe that at the conclusion of the investigation,

nothing was disclosed and the entire proceedings starting with the searches were undertaken merely because information was received by Shri D. Sen from Shri Dhawan at the instance of Smt. Gandhi. The said information was supported by no other useful evidence. Shri Sen in his evidence was unable to throw any light on the finding of any assets disproportionate to the known sources of the income of these officers. The cases under the Prevention of Corruption Act were ultimately dropped.

7.95 Smt. Gandhi has not filed any statement in reply to the notice under rule 5(2)(a) of the Rules nor has she chosen to give evidence in pursuance to the summons issued under section 8B of the Act. Shri Dhawan has denied that in the presence of Shri Pai he was asked by Smt. Gandhi to have the houses of the four officers searched. He has stated that some MPs and others had complained to Smt. Gandhi about the corruption prevailing and about the four officers in particular and he had conveyed this information either personally in the office of Shri D. Sen or on telephone. It is indeed a strange coincidence that the MPs were complaining only against the officers who were engaged in the collection of information relating to Maruti. Between the testimony of Shri T. A. Pai and Shri Dhawan viewed in the light of the rest of the evidence, the Commission has no hesitation in accepting the testimony of Shri T. A. Pai.

7.96 The evidence in the view of the Commission discloses a gross abuse of the authority vested in Smt. Gandhi. She had taken into her head to act as she did merely because the officers of the Commerce and Industries Ministries had, in the discharge of their duties taken steps to acquire information which was likely to affect the interest of Maruti Limited. She pressurised Shri Sen to take proceedings for searching their houses and for filing complaints against them under the Prevention of Corruption Act, which were wholly unjustified and which were eventually dropped.

7.97 A notice under rule 5(2)(a) of the Rules and summons under section 8B of the Act were issued also to Shri R. K. Dhawan and Shri D. Sen. They appeared before the Commission and led evidence in support of their defence. Shri D. Sen has also filed his statement in response to rule 5(2)(a) notice.

7.98 The role of Shri R. K. Dhawan appears to have been merely to convey the message of Smt. Gandhi to Shri D. Sen. Beyond that no other action can be attributed to him, which in turn could be interpreted to have activated the subsequent processes of law that were set in motion by Shri Sen. Accordingly, therefore, the Commission does not take a serious view of the activities of Shri R. K. Dhawan in this case.

7.99 Shri D. Sen, in his statement filed in response to the notice under rule 5(2)(a) has stated that in accordance with the provisions of section 157 Cr. P.C. he had to register cases against those officers after having received the information from Shri R. K. Dhawan and that, in fact, if he had delayed the registration of the cases, it might have been dereliction of

duty on his part and he could have been blamed for that. This contention is not tenable if only for the reason that registration of cases under section 157 Cr. P.C. should have been preceded by the availability of information which, *prima facie*, makes out an offence.

7.100 In the present case the information brought on record by the Intelligence Unit after the secret inquiries, was not of a nature which could be said to have constituted, *prima facie*, commission of an offence by the officers concerned. It was also noticed that Shri D. Sen had no valid explanation for his not recording in writing the exact information that he had received from Shri R. K. Dhawan at the instance of Smt. Gandhi. Repeated questions put by the Commission to Shri D. Sen on this point failed to evoke any useful reply.

7.101 The conduct of Shri Sen discloses that he has misused his authority in directing that First Information Reports be filed against all the four officers and in starting proceedings against them.

7.102 The evidence, therefore, discloses that Smt. Gandhi was responsible for institution of criminal proceedings against the four officers concerned, having their houses searched and subjecting them to humiliation; merely because they were responsible for collecting information in the discharge of their duties, which would have been prejudicial to the interests of Maruti Limited, a concern in which Shri Sanjay Gandhi, her son, was vitally interested.

7.103 This case brings into focus certain undesirable aspects of the functioning of the CBI which in the view of the Commission need to be looked into immediately with a view to prevent a recurrence of the type of abuse of authority and misuse of power by the Director, CBI, in future. It is imperative for the CBI to realise that in setting afoot a series of actions against individuals—whether officials or non-officials—they are irretrievably damaging the reputation and social standing of the individuals concerned. They should not, therefore, be allowed to initiate proceedings against anyone unless it is ensured that the facts on record warrant the type of proceedings that they launch on.

7.104 In the present case there was nothing against any of the four officers except the vague complaints, if at all, allegedly made by the MPs and conveyed to the Director, CBI by Shri Dhawan at the instance of the Prime Minister. Initial enquiries actually revealed nothing specific against any of them. Rather Shri Krishnaswamy was reported to be enjoying a good reputation. And yet the CBI mounted the whole series of actions in their armoury at the end of which nothing incriminating was found. But in the process the CBI had destroyed these officers socially, physically and morally. Now that we have seen that even the man at the top of the CBI with all his seniority and status can still lend himself and his organisation to serve purposes other than strictly legal, constitutional and moral, it has to be ensured that in future no such individual or organisation should be capable of being

rendered a helpless and unquestioning tool in the hands of the powers that be. The Commission feels that certain safeguards need to be provided by making the Director CBI accountable to an independent body. Yet another suggestion can be that the Director CBI may be statutorily rendered independent of the executive Ministry and his term of office made subject to a tenure.

9. Unlawful detention of Textile/Customs employees under MISA by Delhi Administration and institution of false CBI cases against four of them.

7.105 S/Shri B. D. Ghosh, A. K. Chakravorty, R. C. Jain, S. K. Walia, R. Rangaraja, R. S. Gupta, C. S. Venkatesh, V. B. Bhambri and Asutosh Mukherjee were working as Inspectors in the Regional Office of Textile Committee Delhi during April-May, 1976. Shri S. N. Chatterjee was the Assistant Inspecting Officer in the same office. The Inspectors working in the Textile Committee Office were required to obtain from the Textile Committee a certificate to the effect that the fabric from which the garments were made was mill-made or handloom. The Textile Committee is required to ensure that no garments which are made out of mill-made cloth are mis-declared as made from handloom fabric. During the same period, S/Shri Sumer Singh Yadav and M. S. Malik were working as Customs Inspectors at Palam Airport and they used to deal with exports. Their duty included enforcing Export Trade Control Restrictions in the matter of exports and also ensuring that correct rates of 'draw back' are granted to the exporters. 'Draw back' is a refund of central excise duty to the exporter when the goods are exported out of the country, the rate varying, depending on the incidence of duty on the item of raw material.

7.106 On April 22, 1976, Shri S. S. Yadav, who was one of the Customs Inspectors, was told by his Superintendent to draw samples from the consignment of certain packages belonging to M/s. Indira International for determining, for draw-back purposes, whether the garments were actually of mill-made cloth, as claimed by the exporters, or of power-loom cloth. Pending the furnishing of the samples, the export of the consignments had not been permitted. On the basis of the samples drawn by Shri Yadav, he was of the view that the exporters had misdeclared the goods for obtaining illegal benefit of draw-back at a higher rate. Shri Yadav tried to explain to the Clearing Agent of M/s. Indira International that the firm was cheating the Government by mis-declaring that the garments were made out of mill-cloth while actually they were made out of power-loom cloth. On this occasion, the Customs Officer was threatened and told that the consignment belonged to the mother-in-law of Shri Sanjay Gandhi, the son of the then Prime Minister Smt. Indira Gandhi and that the "officers will have to pay the price for the hold-up of the consignment". Out of fear, the Customs Authorities allowed their consignment to be exported without any action.

7.107 Shri R. D. Bhatnagar, one of the Inspectors in the Textile Committee, had visited M/s. Indira International in the course of his official business. Earlier to that Shri A. K. Chakravorty, another Textile

Inspector, had rejected a consignment of ready-made garments of M/s. Indira International. When Shri Bhatnagar met Smt. Doddy of M/s. Indira International, she appeared very much annoyed and threatened that if shipments were rejected or delayed by the officers of the Textile Committee, she would see that drastic action was taken against the officers.

7.108 Shri Suri had been told by Shri S. K. Modi of Modi Yarn Mills and also by Shri Kapoor, Manager of the Indira International, that Shri Sanjay Gandhi's mother-in-law was interested in the Indira International and that they should take care that the firm had no trouble in the transaction of their business.

7.109 Some time in the last week of May, 1976, Shri S. C. Suri, Inspecting Officer in the Textile Committee's office, was rung up by Shri N. K. Singh, Special Assistant to the then Commerce Minister, Shri D. P. Chattopadhyaya, requiring Shri Suri to furnish urgently the addresses and dates of posting of all the inspecting staff in the Textile Committee. Shri Suri has stated before the Commission that Shri N. K. Singh had told him that he would be taken to task if the information asked for by Shri N. K. Singh was not furnished to him within half an hour.

7.110 Shri N. K. Singh has stated that he had asked for a list of names of the Textile Inspectors on an urgent basis from Shri Suri, who, he had been told, would be the right person to collect and furnish the information on a priority basis. This information was required by him as, earlier to that, Shri R. K. Dhawan, Additional Private Secretary to the Prime Minister, or Shri V. Ramachandran, Joint Secretary in the Prime Minister's Secretariat, had rung him up asking for a list of the Textile Inspectors as it had been complained to the Prime Minister that Shri D. P. Chattopadhyaya, the Minister, was showing special favours to the Bengalees. He had brought this allegation to the notice of the Minister who had told him to collect the information and pass it on to the Prime Minister's Secretariat. The information was furnished by Shri Suri to Shri N. K. Singh, who in turn passed it on to Shri R. K. Dhawan. Shri N. K. Singh has also stated that he had been told by either Shri R. K. Dhawan or Shri V. Ramachandran that the information was required by the Prime Minister. Shri R. K. Dhawan has stated that he had rung up Shri N. K. Singh and conveyed to him the information that had come to the notice of the Prime Minister regarding the alleged nepotism of the Minister, Shri D. P. Chattopadhyaya. Shri Dhawan denies that he had mentioned to Shri N. K. Singh that the matter was urgent. The question of asking for the list itself had arisen out of the discussion that he had with Shri N. K. Singh. Later he had received some unsigned list, giving the names of certain officials in the Textile Department, giving the dates of appointment and their other particulars. Shri Dhawan had shown the list to the Prime Minister. According to Shri Dhawan, the list of names was given by him to Smt. Gandhi and it remained with her.

7.111 Shri A. P. Mukherjee, DIG, CBI, has stated before the Commission that some time towards the end of May, 1976, Shri P. S. Bhinder, the then DIG (Range) of Delhi Police had informed him that he

had received some information from the Prime Minister's House about corruption and harassment by some officers of Excise/Customs/Export Promotion Council in the matter of export of garments by various exporters. Shri Mukherjee had told Shri Bhinder that the Delhi Branch of CBI had no information on the subject. Thereafter he set about collecting whatever information was possible on the subject through its officers. Even before Shri A. P. Mukherjee could collect any worthwhile information on which any action could be contemplated, he came to know that 12 officers of the Textile Committee/Customs had been arrested under MISA by the Delhi Police. Thereafter, he discontinued his efforts to compile any further information on the subject.

7.112 According to Shri Bhinder's testimony before the Commission, he had spoken to Shri A. P. Mukherjee, DIG, CBI but had not mentioned to him that the information had originated from P.M.'s House. There is no reason why Shri A. P. Mukherjee should have said that Shri Bhinder had told him that the information had originated from the P.M.'s house if in fact Shri Bhinder had not told him so. Shri Mukherjee was not in any way connected with any of the transactions regarding arrests of the officers concerned which subsequently followed and he was in no need of any excuse to drop names to cover his doings. Shri Bhinder has stated that he had got the information from exporters about the corruption indulged in by the Textile/Customs Officers. In the course of his examination by the Commission, however, he could not name the person who had given him this information, nor had he kept any record of the information.

7.113 The subject of dealing with the corrupt officers generally under MISA had, it appears, been discussed by Shri Bhinder with the senior officers of the Delhi Administration and a policy decision to that effect had also been taken. According to him, he had told Shri Balwant Singh, SP (Anti-Corruption) of the Delhi Administration to collect the list of names of officers indulging in corruption and Shri Balwant Singh had furnished him that list, which formed the basis for action that was subsequently taken against the officers. Shri Balwant Singh in his statement before the Commission however, denied having furnished any such list of corrupt officers to Shri Bhinder, though Shri Balwant Singh had said that at the instance of Shri Bhinder he had detailed his officers to associate with the CBI officers in interrogating the Textile/Customs officers who had been earlier arrested by the Delhi Police under sections 108/151 Cr. P.C. and later on detained under MISA. Shri Bhinder has tried to deny that the arrest of the Textile/Customs officers on fabricated grounds under sections 108/151 Cr. P. C. was done at his instance, though the SPs, particularly Shri R. K. Ohri, Superintendent of Police (Central District), have categorically stated that instructions for these arrests originated from Shri Bhinder.

7.114 Smt. Shailaja Chandra has stated before the Commission that though the subject of arresting generally the corrupt officials under MISA had probably been discussed in the Apex Committee meeting, still the decision was intended to be applicable only to the S/39 HA/77-10.

officials of the Delhi Administration and not to the Central Government employees. In the present case, all the employees were Central Government employees.

7.115 Delhi Police struck in the first week of June, 1976. The concerned Superintendents of Police were supplied the names of the officers of the Textile Committee/Customs by Shri Bhinder who ordered their immediate arrest and detention under MISA because they were indulging in corrupt practices and anti-Government activities. The SPs were also informed that District Magistrate will give instructions to the concerned ADMs for issuing the detention orders under MISA, and that in the meantime "in accordance with the prevalent practice" the officers should be arrested under the preventive sections of the Criminal Procedure Code so that they did not evade arrest by going underground. The SPs passed on the orders to their SHO's after confirming with the concerned ADMs and the arrests followed. The ADMs who had issued the MISA detention orders have all said in their statements that they issued the detention orders merely on the directions of the District Magistrate.

7.116 Customs Inspectors Yadav and Malik were picked up from their office in the afternoon of June 1, 1976, by the Police on some false pretext and locked up. Textile Inspectors Walia, Bhambri, Rangaraja and Asstt. Inspecting Officer Chatterjee, were whisked away from their homes in the late hours of night on the same day. The other Inspectors Ghosh, Gupta, Venkatesh, Chakravorty, Jain and Mukherjee were arrested subsequently at the convenience of the Police between 2-6-76 and 5-6-76.

7.117 Shri Bhinder has admitted before the Commission that he had not obtained the permission of the concerned Ministries before arresting these officers.

7.118 All these officers were initially arrested under the preventive sections of Criminal Procedure Code (108/151) on false and fabricated allegations. Inspector Yadav and Inspector Malik who were arrested from their office premises were alleged to have raised slogans protesting against the Emergency and were plotting to overthrow the Government. Inspector Bhambri was charged with instigating the people against the Government in a public speech allegedly made at 5.30 in the morning on June 2, 1976 in Ajmal Khan Park, while actually he was picked up from his house, earlier at 12.30 at night and locked up at the police station. The other Inspectors were also arrested on similar false allegations.

7.119 All these respectable Government officers were handcuffed by the police while being taken to the Court or to the Jail. Some of them were made to travel in the public buses where they were seen by general public. After a mechanical production before the Magistrate where none of them was given a hearing or offered bail, they were sent to Tihar Jail. Within a few days of their arrest, the detention orders under MISA were duly served on them at Tihar Jail. The grounds of detention in the MISA orders in respect of the Textile Committee officers were that "in the

course of inspection of textile material meant for export, the officers were showing undue favour to the exporters by stamping the sub-standard textile for export to foreign countries which is bringing bad name to the country" and also that the officers "have been indulging in malpractices and acting against the national interest". In respect of the Custom Officers the grounds of detention were that they were "conducting themselves in a manner prejudicial to the maintenance of public order while working as Inspectors in the Air Cargo Unit of Palam Airport." The charges under sections 108/151 Cr. P.C. on the basis of which these officers were initially arrested were subsequently dropped in view of their detention under MISA.

7.120 A meeting took place between Shri D. Sen, Director, CBI, and Shri Bhinder, in the office of the CBI after the arrest of the Textile/Customs officers. At this meeting, Shri Bhinder is reported to have said that he was 100% satisfied that these officers were corrupt. According to Shri Sen, he came to know about the arrests of the officers when the annoyance of the Commerce Minister was conveyed to him by someone whom he does not remember. After he heard from the Delhi Police or from the Commerce Ministry about the arrest of these officers, the CBI decided to move in the matter since there were also charges of corruption against them. He had directed Shri Rajpal to collect whatever intelligence was available regarding corruption against these officers. According to him he left it to Shri A. B. Chaudhary, Joint Director, to take appropriate action after the collection of the required information against the concerned officials.

7.121 A perusal of the CBI file makes a very distressing reading. At the instance of the Director, CBI, the CBI officials moved into action in an effort to collect information against the officials to substantiate the charge of corruption against them. Shri Y. Rajpal, D.I.G. in-charge of the Intelligence Unit of the CBI has stated that it was obvious to him that Shri Sen had already made up his mind to register cases. In the process a couple of CBI officers associated themselves with the S.P. (Anti-Corruption) of Delhi Administration and interrogated the arrested officers in the Tihar Jail. Separately their houses were also kept under watch. As a result of all these efforts, some information was obtained against only four of the arrested officers about their having certain assets. No effort was, however, made to ascertain whether or not these assets were in fact disproportionate to the known sources of their income. It does not appear from the record that any inquiries were made to ascertain whether the officers who had declared certain assets had come by those assets through sources other than their pay. On the basis of the perfunctory efforts made by the CBI officials, regular cases under the Prevention of Corruption Act were registered against four officials, namely Shri S. N. Chatterjee, Shri Asutosh Mukherjee, Shri S. S. Yadav and Shri M. S. Malik. Almost identical FIRs were registered against each of these four officers and their houses were searched. They did not even spare the house of the son-in-law of Shri Malik whose house was also searched by CBI. The searches revealed

nothing. Suffice it to say that after all the investigation that followed, the CBI had to drop all the four cases started against these four officers under the Prevention of Corruption Act. But in the meantime the CBI under Shri D. Sen had done irreparable damage to these officers for no fault of theirs.

7.122 Director CBI, Shri D. Sen, showed extra keenness to register cases against these four officers, though the material available on record did not warrant the action that followed. On the other hand, when it came to dealing with Shri Bhatnagar and Shri Suri, Shri Sen adopted a different yardstick. Shri R. K. Gupta, S.P. and his DIG Shri Rajpal were persistent in their suggestion to Shri Sen that the material available on their record warranted action against them. Shri Sen evaded the issue by asking for yet more material, and eventually Shri D. Sen decided that the material collected against them be forwarded to the Department concerned for appropriate action.

7.123 The Commission cannot help feeling that Shri D. Sen applied invidiously different standards in dealing with the two sets of officers.

7.124 The relations of some of the detained officers ran from pillar to post in an effort to secure the release of the officers. In the process, they knocked at the doors of the Commerce Minister, Shri D. P. Chattopadhyaya, Shri N. K. Singh, the Special Assistant to the Commerce Minister, Shri Bhinder and the Prime Minister. Shri D. P. Chattopadhyaya has stated that he felt very bad about the whole thing and yet felt helpless in the prevailing circumstances. In his statement before the Commission he had said that there was an element of competition between the Delhi Administration and CBI to take the laurels for these unjustified detentions. Shri Qadam Singh, who is one of the relations of Shri Yadav, had even ventured and gone to meet Shri Sanjay Gandhi in the Maruti Factory in an effort to get Shri Yadav released, but Shri Sanjay Gandhi is reported to have told him that he deserved to be taught a lesson.

7.125 Shri S. M. Vohra, one of the Custom officials who had known Shri Bhinder, had also met Shri Bhinder in an effort to get the officers released. Sh. Bhinder at that time is reported to have told Sh. Vohra that only Sanjay Gandhi could help in the matter as he was annoyed over the objections made by Shri Yadav in relation to the consignment of exports by his mother-in-law.

7.126 Shri S. K. Walia's release was secured some time in September and it appears, on the admission of Shri R. K. Dhawan in the course of his statement that Shri Walia is one of his relations.

7.127 The matter regarding the release of the arrested officers had come up before the Screening Committee of the Delhi Administration. Shri Krishan Chand in his statement has said that the cases of the Textile/Customs officers were placed before him in the Screening Committee. He admits that in the meeting held on 16th November, 1976, Shri Bhinder told him that he would like to speak to him separately regarding these cases before any decision is taken,

Accordingly, both Shri Bhinder and Shri Krishan Chand had adjourned to the ante-room where Sh. Bhinder told him that the release of these officers was not to be considered as "these were the orders from the higher-ups". Shri Krishan Chand has said that he had understood "higher-ups" to mean Sh. Sanjay Gandhi. That Sh. Bhinder and Sh. Krishan Chand had a word with each other separately at the time of the Screening Committee meeting is also borne out by Shri T. R. Kalia, Deputy Secretary, Home, Delhi Administration, who was present in that meeting. Shri Bhinder in his statement has, however, said that he had spoken to Sh. Krishan Chand mentioning that he should consult Sh. Om Mehta before deciding to release the inspectors. He, however, denies having told Shri Krishan Chand about the orders from the "higher-ups".

7.128 The story of the arrest and detention of the Textile Inspectors makes a very sad reading. Going entirely by the facts available on record, it has nowhere been established that these officers were corrupt or had done anything which could even distantly be interpreted as improper or incorrect. On the contrary, some of them had acted courageously and correctly in the discharge of their duties and this proved to be their undoing. In the process they had antagonised the proprietors of M/s. Indira International whose financial interest with the mother-in-law of Sh. Sanjay Gandhi stands proved on the basis of documentary evidence. The relevant income tax records of Smt. Anteshwar Anand, mother-in-law of Sh. Sanjay Gandhi were produced before the Commission, on the basis of which it is fully and completely established that Smt. Anteshwar Anand had considerable financial interest in the firm M/s. Indira International. In the year ending 31st March, 1976 and 31st March, 1977, substantial amounts had been received by Smt. Anand from M/s. Indira International as commission, as proved by the Income-Tax Returns of Smt. Anteshwar Anand, produced before the Commission by the Income Tax Officer.

7.129 The list of the Textile Inspectors was obtained by Shri N. K. Singh at the instance of Shri R. K. Dhawan and the list was passed on by Sh. N. K. Singh to Sh. R. K. Dhawan, who in turn had passed it on to Smt. Gandhi. The contention that the list of Textile Inspectors was required only to check or verify the allegation regarding nepotism by Sh. D. P. Chattopadhyaya with regard to Textile Inspectors does not appear to be correct. If this list was required only for deciding the issue with regard to the allegation of nepotism against Sh. D. P. Chattopadhyaya, how could this conclusion be arrived at correctly by obtaining only the list of Textile Inspectors—a small group of officers in a Ministry which has hundreds of other employees distributed over a large number of Departments. It appears that the list furnished by Sh. N. K. Singh to Sh. Dhawan was given to Smt. Gandhi, and from Smt. Gandhi it appears to have gone to Sh. Bhinder who thereafter cracked down on a few selected officers. The contention of Sh. Bhinder that he got the list from Sh. Balwant Singh is not tenable as this does not explain how he got within that list, the names of just

the two Customs Officers who happened to have antagonised M/s. Indira International. Shri Balwant Singh himself has denied having furnished any list to Sh. Bhinder.

7.130 Sh. Bhinder on his own admission has been the prime mover in the sordid story of these arrests and detentions.

7.131 After the preliminary stage of hearing in this case, the Commission had given a notice under Rule 5(2)(a) of the Commissions of Inquiry Rules and summons under section 8B to Smt. Indira Gandhi, Sh. D. Sen, Sh. R. K. Dhawan, Sh. P. S. Bhinder, Sh. N. K. Singh and Sh. Balwant Singh. Smt. Gandhi though she responded to the summons, did not submit her statement as required under Rule 5(2)(a) and also refused to be examined on oath. The remaining four had responded to the notice and the summons. The Commission has taken into account the versions of Sh. N. K. Singh, Sh. Balwant Singh and Sh. R. K. Dhawan. The Commission is satisfied that they had played a very limited role each in their respective fields and they cannot be held responsible for the arrest and detention that followed nor for the CBI cases that were mooted against four of these officers.

7.132 Regarding Shri D. Sen and Sh. P. S. Bhinder, the Commission, before coming to its conclusion on the part played by them, has taken into account their written statements as also the evidence brought on record by the statement of witnesses whom they had examined and also chosen to cross-examine.

7.133 Shri D. Sen appears to have lent himself and his organisation for purposes other than those which are strictly within the terms of the charter of the CBI. It cannot otherwise be understood how he could have mounted the cases of corruption against the four officials, searched their houses including the house of the son-in-law of one of the officers, unless it was at the instance of Shri Bhinder. The entire action by the CBI under Shri D. Sen was initiated on grounds, which were totally inadequate and imaginary. As against this, he let off without any action two officials against whom there was adequate material to warrant prosecution under the Prevention of Corruption Act. He has grossly misused his position as the Director, CBI, and abused his authority.

7.134 The Commission feels that Smt. Gandhi has abused her authority and misused her power in having caused the arrest and detention of these 12 officers without adequate justification and using the CBI to set in motion criminal cases against four of them, all of which had to be abandoned eventually for want of any material.

7.135 Shri Bhinder has been the hatchetman and he went about the arrest and detention of these officers without any justification whatever. He was also responsible along with Shri D. Sen to get the CBI to register cases against four of these officials. He has grossly abused his authority and misused his power.

10. *Misuse of powers and miscarriage of justice in saving Shri Sudarshan Kumar Verma, a clerk in the Railways, from legal punishment by the CBI officials.*

7.136 On information furnished by Sh. Gopal Das, a loco-shed man, that Shri Sudarshan Kumar, a clerk employed by the Northern Railway was demanding illegal gratification as consideration for fixing the scale of pay of Shri Gopal Das, a case was registered and arrangements were made by the CBI Delhi Branch, to trap Shri Sudarshan Kumar when receiving the bribe. Shri Sudarshan Kumar was caught in the actual process of demanding and receiving bribe.

7.137 Shri Verma appears to have had access to the Prime Minister's household and he got in touch with his contact.

7.138 Shri D. Sen, the Director of CBI was asked by some one from the Prime Minister's house to look into the case.

7.139 A complaint was lodged and investigation was completed. Prosecution of Shri Verma under section 161 of the Indian Penal Code and section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act was sent to the Vigilance Officer, Northern Railway on January 31, 1976.

7.140 Normally, the Director of CBI handles important cases dealing with high officers, whereas cases involving non-Gazetted officials are dealt with at the Branch level and neither the Director nor the Joint Director is concerned with such cases. But, in this case, shortly after the case against Shri Verma was registered, the Director, CBI, Shri Sen called Shri A. P. Mukherjee, DIG, CBI, Delhi Branch and called for the case papers.

7.141 After the recommendation regarding the prosecution of Shri Verma had been sent, the Director desired that the case should be examined once again. Thereafter, the DIG discussed the feasibility of getting-back the SP's report from the Railway Department. A Superintendent of Police was sent to the Railways to contact Shri Prasad and Shri Dayal of the Railways to retrieve the report but his attempts were unsuccessful.

7.142 After they failed to retrieve the report from the Railways, Shri Verma submitted a representation some time in September, 1976, to Shri Sen with a request that the case should be reconsidered. Shri Sen then desired that the Delhi Branch should send the comments on the representation and these comments should be sent to him through the Joint Director, Shri A. B. Choudhary. Shri A. P. Mukherjee of Delhi Branch sent his comments on the representation of Shri Verma. He was of the view that there was no substance in the representation. Shri A. P. Mukherjee had taken a courageous stand even at this stage when he should have been in no doubt about what his superior officer desired. Comments were put up by the Delhi Branch and on September 9, 1976, Shri Choudhary called the DIG to come and see him with the case records. This was accordingly

done by Shri Mukherjee. The case was discussed and it was ultimately decided that a Junior Law Officer should examine the representation and give his views. Thereafter, the matter was sent to Shri Jamuar, who gave his comments first finding that there was no substance in the points raised by Shri Verma, and also that the representation could make no impact on the prosecution case in a court of law. But he suggested that certain circumstances might be relied upon by Shri Verma at the trial and, therefore, there was justification for reconsideration of the case. It was mentioned by Shri Jamuar that at the time of the trap the independent witness, who had seen the acceptance of the bribe and had overheard the conversation, was with the CBI Inspector, and, therefore, Shri Verma could take the plea that the independent eye-witness was under pressure of the police officer. He also suggested that at the time of the search of Shri Verma, a pronote for Rs. 3,300 was recovered from his person and that that Shri Verma may take a plea that the loanee had returned a part of the amount through the decoy. These contentions were not raised by any one any time prior to the report made by Shri Jamuar. Shri Jamuar suggested that the evidence should be evaluated through a departmental enquiry first to know all probable explanations of the accused before he was sent for trial. Shri A. B. Choudhary agreed with the comments of Shri Jamuar and endorsed the recommendation that the case should be sent for departmental action first.

7.143 On September 9, 1976, Shri Sen, the Director, agreed with Shri Choudhary's suggestions and orders were issued to the Delhi Branch for taking further necessary action.

7.144 A fresh attempt was made by the SP Delhi Branch to retrieve the SP's reports from the Railways. The Railway Authorities on receipt of the request in writing handed over the SP's reports. Thereafter, a fresh report was prepared recommending departmental action against Shri Verma and was sent to the Railway Authorities.

7.145 The circumstances of the case and the evidence given by Shri Sen leave little room for doubt that someone from the Prime Minister's household contacted Shri D. Sen and asked him to so arrange that Shri Verma was not prosecuted. Accordingly, contrary to the normal procedure, adopted in similar cases, Shri D. Sen himself called for the papers, attempted through his subordinates to retrieve reports from the Railways and having failed to do so, suggested a different line of action according to which Shri Verma should be dealt with departmentally. The evidence of Shri Mukherjee and the Vigilance Officer of the Railways, in the light of the attempts made to retrieve the report from the Railways leave little room for doubt, that this was not a case in which, according to the accepted procedure, departmental inquiry should have been ordered. But it was because of pressure from above that Shri Verma was not prosecuted and various steps were taken.

Mr. D. Sen was given a notice under rule 5(2)(a) of the Rules and served with a summons under section

8B of the Act. He submitted a statement and also responded to the summons. His statement of defence has been taken into account.

7.146 It is not possible to say as to who from the Prime Minister's Secretariat or Household brought pressure upon Shri D. Sen and reminded him subsequently. Shri D. Sen has stated that he met Shri Verma in the morning Durbar at the house of the Prime Minister, Smt. Indira Gandhi, and that Shri Verma made a representation. Shri D. Sen further stated that because the representation was made to him in the Prime Minister's house, he called for the papers and reconsidered the matter. He further stated that if he did not do so, he might have been taken to task if the case had failed in a court of law. Shri D. Sen has also stated in his defence that he had not finally closed the prosecution of the case. He had only suggested the testing of the evidence in a Departmental inquiry and if the evidence stood the test of the Departmental inquiry, the authorities could always get back to the prosecution. But on the evidence it is clear that at the instance of some one from the Prime Minister's house, Shri D. Sen perverted the normal procedure and pressurised his subordinate officers with a view to help Shri Verma from being punished in a prosecution for an offence under section 161 of the Indian Penal Code and section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act. On the materials collected by the authorities, there was little chance of Shri Verma escaping conviction for the offence of receiving a bribe.

7.147 It is, therefore, a clear case in which perversion of the normal process by Shri D. Sen and misuse of power is established.

11. *Deviation from established procedure, Misuse of Power and Abuse of Authority by Shri T. R. Tuli, Chairman of the Punjab National Bank, in allowing a clean overdraft to M/s. Associated Journals Ltd.*

7.148 On the 22nd of March, 1976, the Parliament Street Branch of the Punjab National Bank permitted a clean overdraft of Rs. 8,30,000 to M/s. Associated Journals Limited, a company which carries on business mainly as printers and publishers of newspapers. The only short point for consideration in this case is as to whether this transaction was a normal one in the ordinary course of the Bank's business or whether it was entered into because of collateral considerations. Several facts have been placed before the Commission and arguments advanced in relation thereto which are totally irrelevant and extraneous to the consideration of this basic point and it is not, therefore, necessary to discuss them here.

7.149 Briefly, the undisputed facts are that early in March 1976, Shri T. R. Tuli, the then Chairman and Managing Director of Punjab National Bank met Shri P. C. Sethi, the then Minister for Chemicals and Fertilisers at the Minister's residence at the latter's

request. At this meeting Shri Tuli was asked by Shri Sethi to help Associated Journals Limited by advancing money to them to enable them to take delivery of certain items of imported machinery which had arrived at Bombay and on which Associated Journals had to pay a considerable sum of money by way of customs duty and demurrage charges. Thereafter, Colonel Zaidi, the then Chairman and Managing Director of Associated Journals Limited and an Accountant of that Company met Shri T. R. Tuli in Shri Tuli's office two or three times to explain the requirements of Associated Journals and apparently also suggested that the sum of money to be immediately advanced would be paid off from a term loan of Rs. 15 lakhs to be advanced by the Bank to Associated Journals against the security of the second mortgage of their building known as "Herald House" on Bahadur Shah Zafar Marg, New Delhi. According to Shri Tuli's written statement dated October 22, 1977, after the discussions, in his office referred to above, a formal request was made by Associated Journals to the Parliament Street Branch of this Bank on March 20, 1976, requesting for the grant of a temporary overdraft of Rs. 10 lakhs. Shri Tuli has also added that he had given his verbal approval to Shri L. D. Adlakha, Manager, Parliament Street Branch, in this regard. In the course of his examination before the Commission, Shri Tuli could not state definitely when this verbal approval to the transaction was given but he indicated that it must have been on the 18th or the 19th of March, 1976.

7.150 Associated Journals Limited did not have an account in the Punjab National Bank till then and they, therefore, opened a current account in the Bank on the 20th and deposited a sum of Rs. 1,70,000 in that account. On March 22, a cheque for Rs. 10 lakhs was issued by the Punjab National Bank to enable Associated Journals to have adequate funds to pay the customs duty and the demurrage required to clear the machinery at Bombay. Thus, the entire transaction resulted in a net overdraft of Rs. 8,30,000 in favour of Associated Journals Limited. Thereafter, there was correspondence between the Parliament Street Branch of the Bank and the debtor company with a view, on the part of the Bank, to ensuring that the clean overdraft already permitted was properly secured. It is seen that on the 21st April, 1976, Associated Journals wrote to the Punjab National Bank to the effect that due to some technical difficulties, they were not in a position to offer the "Herald House" as security and further that they were arranging to repay the overdraft within a short period. It would appear that thereafter Associated Journals were making efforts to raise the sums required to repay the clean overdraft from the Punjab National Bank by offering "Herald House" as a security by way of second mortgage to the Syndicate Bank and that for some reason or the other, they did not in fact succeed in raising the requisite funds and in repaying the Punjab National Bank. It would appear that upto now they have been able to repay only a sum of Rs. 20,000 towards interest and that well over a sum of Rs. 10 lakhs by way of principal and interest is outstanding against Associated Journals

in the books of the Punjab National Bank. The questions for consideration are whether—

- (a) Mr. T. R. Tuli had himself taken the decision about allowing the clean overdraft, or whether he had only approved a transaction negotiated and entered into by the Branch Manager of the Parliament Street Branch, and
- (b) If Shri Tuli had indeed permitted the overdraft and had been responsible for the decision in this regard, whether he had taken the minimum necessary precautions that a prudent officer of the Bank should have taken, in order to ensure the interests of the Bank.

In the course of his first testimony before the Commission on November 17, 1977, Shri Tuli was asked whether the loan was granted at his instance by the Parliament Street Branch of his Bank, contrary to normal loan granting practice followed by the Bank, Shri Tuli replied that there was a "reason" for doing so as he had already stated in his written statement which had just been read out; the reason being Associated Journals Limited were in urgent need of money and further that ultimately they were to get a term loan against the mortgage of a building. In response to a further query as to whether he looked at the balance sheet of the company, he replied "No Sir, not at that time". When asked why he did not look at the balance sheet, which was certainly his duty as a Banker, he replied "that was my omission". When further questioned as to why he insisted upon advancing this sum of money without any security, which he was required to take immediately, he replied that it was just by looking at the urgent requirements. When asked whether his action was because a Minister had advised him to help the company, he replied, "Yes Sir, that is a big consideration for me". And added that "naturally when a Minister says some consideration has got to be given to that and that is why the whole thing was expedited". The Commission reminded Shri Tuli of a portion in his written statement wherein he has stated that he had given his verbal approval to Shri Adlakha and that since National Herald published by Associated Journals was connected with the then Prime Minister, it must have weighed a "little in his mind to deal with the case on a priority basis expeditiously". When Mr. Tuli was reminded that it was without any security, Shri Tuli replied "of course it was without security".

7.151 Shri Sethi basically confirmed Shri T. R. Tuli's version of their meeting and the only important point that he made was that according to him this request was that Associated Journals should be helped "within the frame-work of the rules". He also added that at the relevant time he had also become the Treasurer of the Congress and that he would say that he acted in this case in his capacity as a Congressman.

7.152 Shri Tuli has filed a voluminous statement in response to the notice under Rule 5(2)(a) of the Commissions of Inquiry Rules, 1972, and responded

to the summons u/s 8B of the Act issued to him in this case. It is not necessary to go into the statement in detail except to point out that Shri Tuli has sought to change the stand originally taken by him in his written statement dated October 22, 1977 and his oral testimony before the Commission on November 17, 1977. Towards this objective, he has made certain unwarranted observations about the Commission and its investigating officers which I propose to ignore. The main thrust of the statement is that Shri L. D. Adlakha, the then Manager of the Parliament Street Branch of the Bank had been associated with the representatives of Associated Journals from the earlier stage and that in fact that the transaction had been negotiated and examined by Adlakha and put up to Shri Tuli for approval and that Shri Tuli had merely given his oral approval thereto.

7.153 Shri Tuli's statement at this subsequent stage that Shri Adlakha was associated in the earlier discussions which he had with Col. Zaidi and other representatives of Associated Journals Limited does not appear to be correct as there is no mention about that in his written statement dated October 22, 1977. Much has been sought to be made out both in Shri Tuli's statement dated January 9, 1978 and the arguments advanced by his Counsel that the entire correspondence was with the Manager of the Parliament Street Branch of Punjab National Bank and further that even the internal communications in the Bank referred to that Branch as the one which had negotiated and entered into the transaction. In this connection reference was made to a letter dated March 20, 1976, in which Associated Journals Limited mentioned that they would be grateful if the Bank could kindly sanction them temporary overdraft of Rs. 10 lakhs. This is the very letter which is referred to by Shri Tuli in his written statement dated October 22, 1977, as the "formal request" after his discussions, which he had had with Colonel Zaidi and the Accountant of Associated Journals Limited. It is further seen that in another letter dated March 20, 1976, addressed by Associated Journals to the Punjab National Bank they had referred to the proposal as "principally agreed to by your Head Office authorities". Similarly, in the Branch Manager's letter dated April 8, 1976, to the Head Office, he had made it quite clear that they had, "at the Company's request and under the approval of our worthy Chairman" permitted a clean overdraft of Rs. 8,30,000 on March 22, 1976. Shri Adlakha's statement in his affidavit dated October 31, 1977, that Shri Tuli had directed him to grant a clean overdraft of Rs. 8,30,000 to Associated Journals Limited has stood the test of cross-examination by Shri Tuli's Counsel. Even in his testimony before the Commission on January 17, 1978 in response to the summons under section 8B of the Commissions of Inquiry Act, 1952, Shri Tuli has confirmed the fact that the recommendation made by Shri Sethi and the request made by Col. Zaidi had been taken into account in arriving at a decision in this case, and that the cumulative effect of all these factors had governed the approval of the loan. He had also conceded that there were extra-commercial considerations "to some extent".

7.154 On the basis of the evidence adduced, there can be no doubt that the decision to allow a temporary overdraft in this case without any security; albeit on the understanding which did not materialise that the security will be provided soon thereafter, was solely that of Shri T. R. Tuli.

7.155 The next question is as to whether he had exercised the care and caution expected of a prudent person entering into a transaction of this nature on behalf of his employer. There were several circumstances in this case which should have put Shri Tuli on his guard:

- (i) Associated Journals Limited did not have an account with Punjab National Bank till then, whereas at that time they had four Bankers including Syndicate Bank, United Commercial Bank and Vijaya Bank Ltd. There is nothing on record to show that Shri Tuli either on his own or through any of his officers made any confidential enquiry from the other Banks to ascertain the credit-worthiness of the party. On the other hand, the very fact that Associated Journals Limited had to approach a Bank with which they had no prior dealings instead of one of their four already existing Bankers was adequate enough reason to suspect that not everything was well with this proposal.
- (ii) The machinery in question had arrived in Bombay towards the end of October 1975, and demurrage was being accumulated at the rate of Rs. 4,000 per day, it having reached well over Rs. 6 lakhs by the time the Punjab National Bank was approached. This also should have caused some concern to Shri Tuli as no prudent businessman, unless he is in absolute distress and unable to raise any funds, would allow demurrage of this magnitude to add to the cost of his capital equipment.
- (iii) In the course of his testimony, Shri Tuli has confirmed that he had not at the relevant time seen the balance sheet of the company or assessed its financial soundness. In fact, Shri Tuli has admitted that no evaluation report regarding Associated Journals, nor their balance sheet, nor any statement of their assets and liabilities had been seen by him, before he approved this proposal. It is also seen from a report of the Central Intelligence Section of the Credit Administration of the Punjab National Bank that Associated Journals Limited had incurred heavy losses of about Rs. 10 lakhs per year in 1973-74, and 1974-75, that their accumulated losses stood at Rs. 47.46 lakhs against paid up capital of Rs. 51.64 lakhs and some tied up reserves of Rs. 6.77 lakhs.

Thus, according to the report, not only the whole of the reserves and surpluses stood wiped off but the paid up capital to the extent of Rs. 40.69 lakhs also stood eroded. The Company also had substantial liabilities both secured and unsecured. These are matters which would have become clear even on the basis of a cursory examination of the company's last balance sheet and subsequent statements or books of accounts. It is clear that no such examination was made or directed to be made by Shri Tuli before he took the decision in this case.

7.156 Shri Dang appearing on behalf of Shri Tuli strenuously urged that to his knowledge the Associated Journals did own a building in Delhi known as 'Herald House' which was of considerable value and that the ownership of this building considerably influenced Shri Tuli in granting a clean overdraft without insisting upon any security. It appears that Associated Journals did own the 'Herald House'. There is no clear evidence before the Commission as to the market value of the building at the date when the transaction took place nor about the encumbrances if any outstanding thereon and the other liabilities outstanding on the date of the transaction. Whether the bank may ultimately have been able to recover the whole or part of the amount advanced by way of a clean overdraft amount after litigation or otherwise is not relevant for the purpose of this enquiry. The building, it appears was valued at cost and depreciation was deducted. The balance sheet did not disclose any ostensible assets out of which the amounts advanced could be recovered. The bank advancing funds on a clean overdraft would normally try to ascertain the credit-worthiness of the borrower and try to ensure whether the amount advanced would be repaid by the borrower on demand. This would be the minimum precaution which a banker could take before advancing even a small amount by way of clean overdraft. In the present case, however, no precautions which would be normal in advancing money on clean overdraft account were taken; but solely because of the intervention of the Minister Shri P. C. Sethi loan was advanced, disregarding the canons which would ordinarily govern the advancing of such a loan.

7.157 For these reasons, the Commission is firmly of the view that Shri Tuli who had permitted the overdraft and was responsible for the decision in this regard had taken it without making the minimum necessary examination of the facts of the case and without exercising a modicum of care or caution and that this conduct on his part is attributable to the fact that he was swayed by collateral considerations. Thus, this transaction was not a normal one in the ordinary course of the Bank's business. The Commission is of the view that Shri Tuli had subverted established procedure in permitting this overdraft without security to M/s. Associated Journals Limited. He has also misused his powers and abused his authority in so doing.

12. *Deviation from established procedure in sanctioning facility by way of opening of three foreign Letters of Credit by the Punjab National Bank in favour of M/s. KRSMA Chemicals Private Limited.*

7.158 On the 28th of September, 1976, the Parliament Street Branch of the Punjab National Bank established three foreign letters of credit aggregating to Rs. 9,30,000 without margin on behalf of M/s. KRSMA Chemicals Private Limited (hereinafter referred to as the Company), for the import of certain chemicals. It would appear that Shri S. P. Mehta, since deceased, one of the Directors of the Company, approached Shri T. R. Tuli, the then Chairman and Managing Director of the Bank, through the good offices of one Shri Virender Kumar who was at the relevant time an Additional Private Secretary to Shri P. K. Mukherjee, the then Minister for Revenue and Banking. According to Shri Tuli, Shri Kumar introduced Shri S. P. Mehta as the father-in-law of Shri Sat Mehta, who was a brother of Shri Om Mehta, the then Minister of State for Home Affairs. Incidentally, Shri Sat Mehta was one of the major shareholders of this Company at the relevant time, holding nearly fifty per cent of the shares.

7.159 In his statement dated November 14, 1977 Shri Tuli has added that :

"Shri Kumar further requested me to get three Foreign Letters of Credit opened without any margin on behalf of KRSMA Chemicals Pvt. Ltd. as the Company was holding import licence. Since the party was related to Shri Om Mehta and was brought by Shri Kumar, I asked the Regional Manager Shri D. P. Nayyar, who incidentally happened to be at the Head Office, to get the needful done expeditiously.

"I had no occasion to assess the financial soundness of the Company or its Directors except that the Directors were highly connected and as per Shri Kumar, they were very well experienced in the line."

7.160 Thereupon Shri D. P. Nayyar took Shri S. P. Mehta and his companion to Shri K. N. Vali, Branch Manager of the Parliament Street Branch of the Bank, and informed Shri Vali that Shri Tuli had instructed him to take Shri Mehta and his companion to Shri Vali and asked him to open three foreign letters of credit without any margin on behalf of KRSMA Chemicals Pvt. Ltd. At this stage, Shri S. P. Mehta handed over to Shri Vali a letter from the Company dated September 28, 1976 which, *inter alia*, stated that "as already sanctioned by your Chairman we are enclosing herewith three applications for opening letters of credit by cable without margin". According to Shri Vali, the letter along with the oral instructions of the Chairman conveyed through Shri D. P. Nayyar constituted approval of the Head Office for the proposed transaction. Shri S. S. Jolly, Manager of the Foreign Exchange Department of the same Branch, who happened to be present in Shri Vali's room at the relevant time, has added that Shri Nayyar had also instructed

him to ensure that no inconvenience was caused to Shri S. P. Mehta and that the work was done expeditiously.

7.161 The documents covering the imported goods arrived in December 1976. The Company cleared one of these for a sum of about Rs. 1,60,000 but failed to clear the other two documents totalling about Rs. 7,70,000. The Company pleaded inability to retire them in view of the tight credit squeeze and came forward with various proposals which they failed to implement. The Bank was thus left with no option but to take delivery of the goods to avoid further demurrage etc. The total cost to the Bank including customs duty and demurrage in respect of these two documents amounted to Rs. 9.15 lakhs and according to Shri Vali's statement, the Bank is likely to incur a loss of Rs. 4.5 lakhs on the transaction after taking into account the prevailing prices of these chemicals in the market. It would appear that the chemicals were imported under an Actual Users Licence and that the condition that goes with such a licence, namely, that it can be sold only to an actual user would restrict its marketability.

7.162 The short point for consideration in this case is whether Shri Tuli's decision to enter into this transaction expeditiously and his directions in this regard to the concerned officers was influenced solely by his commercial judgment in relation to it or whether it was in any way influenced by collateral considerations.

7.163 That Shri Tuli had taken the decision in this regard on his own has not been disputed by him, even in the statement dated January 13, 1978, filed by him in response to the Notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972. Shri Tuli has, however, sought to furnish certain reasons for arriving at this decision and has also made an attempt to blame some officers for certain alleged procedural irregularities. There is no need to consider such alleged irregularities, if they relate to events subsequent to the date of the opening of the letters of credit because the vital point for consideration is to examine whether normal established conventions or procedure had been followed before entering into the transaction or in case they had not been followed, the reasons for such departure from established conventions and procedure.

7.164 In his written statement dated November 4, 1977 Shri K. N. Vali has stated that the normal procedure followed by the Punjab National Bank in the case of any prospective borrower is to take the loan application in the prescribed form accompanied by a statement of assets and liabilities and previous experience on the basis of which the proposal is appraised by the Branch after ascertaining the credit-worthiness of the borrower and the viability of the proposal. He has added that unless the Bank is satisfied about the credit-worthiness of the borrower and the viability of the project no foreign letter of credit is opened without any margin. According to him, all this procedure would take a period of two to three weeks to get the proposal compiled, processed and sanctioned by higher authorities. In the course of his oral testimony on November 17, 1977, Shri Vali has stated that he did not make any

pre-assessment of the proposal because he was under instructions of his higher authorities. He has added further that the clear instruction that the letters of credit were to be established "without margin" meant that the pre-assessment required had been made by such higher authorities and that they knew about the party well enough to give such directions. In fact, Shri Vali's assessment of the financial soundness of the Company was made after the event and his comments in relation thereto could not but have been influenced by the fact that the transaction had already been made and had, therefore, to be justified. Nor could he have ignored the fact that the Company had been strongly recommended to him by no less a person than his own Chairman and Managing Director.

7.165 In the course of his submissions, Shri Tuli's Counsel referred to a letter dated 16th September, 1976 addressed by the Company to the Chairman of the Punjab National Bank. The original of the letter was produced at the time of hearing and a photostat copy thereof has been taken on record. It was seen from an endorsement on the letter that it was received in the Parliament Street Branch of the Bank only at 3 p.m. on the 27th of September, 1976. In this letter the Company had requested the Chairman to issue instructions to the Greater Kailash Branch of the Bank with whom the Company had already opened an account, to issue the letter of credit without margin by cable. In the course of his testimony in response to the summons u/s 8B of the Commissions of Inquiry Act, 1952, Shri Tuli has stated that he had never seen this letter and that it never came to him. It was Shri Tuli's contention that the letter may have been received by his personal staff and forwarded by them to the concerned Branch. There can be no doubt that in the normal course, a letter addressed to the Chairman of the Punjab National Bank, would have been received by him or his personal staff on his behalf. In this case, if the personal staff had forwarded the letter to the concerned Branch, it should be presumed that they would have sent it to the Branch referred to therein, namely, the Greater Kailash Branch. There is also no satisfactory explanation for the gap of about eleven days between the date of the letter and the date on which it was received by the Parliament Street Branch of the Bank which is in the same building as the Head Office. The Commission is, therefore, of the view that this letter was, in fact, received by Shri Tuli and was with him for some time until he took a decision in relation thereto on or around 27th September, 1976, when he had it forwarded to the Branch to which he subsequently directed the representatives of the Company.

7.166 In his written statement dated January 13, 1978 referred to above, Shri Tuli has stated that on his further questioning, Shri S. P. Mehta had mentioned to him that the raw materials covered by the import licences were being imported by him as an actual user and that their market value was much higher than their imported value. There is no mention of this conversation with Shri S. P. Mehta either in Shri Tuli's written statement dated November 14, 1977 or in his oral testimony before the Commission on November 17, 1977. On the other hand, he has pointed out that he had no occasion to assess the financial soundness of the Company or its Directors except that the

Directors were highly connected and according to the person who introduced him to them, they were well experienced in the line. If the soundness of the proposal as distinct from the financial soundness of the party had been arrived at that stage by Shri Tuli, it is most unlikely that he would have failed to mention it at the earlier stages. In fact, in his oral testimony before the Commission on November 17, 1977, Shri Tuli has stated that because of the fact that certain relatives of a Minister of State were concerned, the matter was expedited and immediate action taken. Herein lies the deviation from normal established procedures. Normal established procedures in a case of this type would have required the completion of various formalities and considerable pre-assessment of the Party's credit-worthiness and viability of the proposal. These requirements were dispensed with because of the urgency and the Chairman's direction to act immediately.

7.167 Under the circumstances, this is a clear instance where the Chairman and Managing Director of the Punjab National Bank, Mr. Tuli, took a decision and gave directions for its implementation contrary to the normal established procedures in such cases.

13. *Concessions by Punjab National Bank in favour of Maruti Limited.*

7.168 In 1971, Maruti Ltd., a Company incorporated under the Companies Act, 1956 had applied to the Punjab National Bank for certain cash credit and other facilities. From early 1972, the Bank allowed certain facilities and by the time Shri T. R. Tuli took over as Chairman and Managing Director of the Bank in August 1975, the Company already enjoyed a total facility of Rs. 90 lakhs from the Bank subject to certain stipulations. Cash credit accounts of the Company with the Bank started becoming irregular from 1974 onwards, and the Bank had been asking them from time to time to regularise the accounts. The Bank had also started charging, in accordance with its normal practice, penal interest on the accounts to the extent to which they were in excess of the allowed limits.

7.169 After protracted correspondence, Maruti Ltd., wrote to the Punjab National Bank in September 1976 stating that they had incurred heavy losses and requested the Bank to waive the penal interest and also to reduce the rate of interest to the maximum extent possible. In their turn, the Company agreed to regularise the accounts by making a lump sum payment of Rs. 5 lakhs and monthly remittances of the order of Rs. 1 lakh. The then Assistant General Manager (Credit) of the Bank considered these proposals and recommended to the Board that penal interest of a little over Rs. 67,000 already charged in the accounts may be refunded and that it may be waived for the future. He also recommended that the rate of interest may be reduced from 15½% to 14% per annum. This recommendation was endorsed by his superior officers and was approved by the Board at its meeting held on October 6, 1976.

7.170 As the Company failed to keep up its commitment regarding recurring payments for and from

April 1977, the refund of penal interest allowed was cancelled and the facility of concessional interest also stood withdrawn.

7.171 On the basis of these facts, the question that arises for consideration is whether Shri T. R. Tuli, the then Chairman and Managing Director of Punjab National Bank acted rightly in accepting and recommending the proposals for waiving of penal interest and for reducing the rate of interest charged to the party, or whether he should have resorted to legal proceedings with a view to recovering the Bank's outstandings. Shri T. R. Tuli has filed a statement in response to the Notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972, and has also appeared in response to the summons u/s 8B of the Commissions of Inquiry Act, 1952.

7.172 When any Bank is faced with what is generally referred to as a 'sticky account', it can either nurse it back to health, *inter alia*, by making concessions in the matter of interest, schedule of payments, etc., or start legal proceedings on the basis of the security on the basis of which advance would have been made. Often it is seen that Bank's interests are best served by adopting the first course of action as the latter can land the Bank in needless litigation and would be resorted to only if all other efforts fail. It is, therefore, essentially a question of judgment.

7.173 In view of this and taking into account the evidence adduced and the arguments advanced, the Commission is of the view that no subversion of administrative procedures or misuse of power or abuse of authority has been established in this case.

14. *Deviation from the established procedure and irregularities in the reconstitution of the Boards of Air India and Indian Airlines Corporations.*

7.174 The terms of the Boards of Air India and Indian Airlines Corporation expired on August 31, 1976. Files relating to reconstitution of the two Boards were submitted to the then Minister for Tourism and Civil Aviation, Shri Raj Bahadur. He directed that for the time being, the two Boards should be kept functioning, and the Ministry should recommend to the approval of the Appointments Committee of the names for each Board, as suggested by him, and leave the remaining members to be nominated later.

7.175 Shri N. K. Mukarji, Secretary in the Ministry, accordingly, sent a proposal to the Establishment Officer on January 7, 1976, requesting him to obtain the approval of the Appointments Committee of the Cabinet and for a long time no final decision was conveyed to the Ministry in spite of several reminders. On February 9, 1976, Shri N. S. Bhatnagar, the then Special Assistant in the Ministry of Tourism and Civil Aviation received a telephonic message from the Additional Private Secretary to the Prime Minister (Shri R. K. Dhawan) suggesting to Shri Bhatnagar that certain names should be recommended to the Appointments Committee of the Cabinet as Members of the Boards of Directors of the two Corporations. Shri Dhawan informed Shri N. S. Bhatnagar that those

names had been suggested by the then Prime Minister Smt. Indira Gandhi and further stated that Shri Bhatnagar should not mention those names to the Secretary of the Ministry, Shri N. K. Mukarji. At that time, the Minister was away-on-tour and Shri Dhawan advised that Shri Bhatnagar should send the proposal under his own signatures. Shri Bhatnagar declined to do so saying that he was incompetent to carry out the suggestion and that recommendation of the names should await the Minister's return. Shri Dhawan felt annoyed at what Shri Bhatnagar said. Shri Raj Bahadur returned to Headquarters the same evening and was apprised of the conversation by Shri Bhatnagar, which he had with Shri Dhawan. Shri Bhatnagar also furnished to Shri Raj Bahadur the list of names which had been dictated to him by Shri Dhawan on telephone.

7.176 Shri Raj Bahadur, accordingly, sent a fresh proposal for reconstitution of the two Boards directly to the Prime Minister on February 10, 1976, under his own signature. This fresh proposal contained all the names which were dictated by Shri R. K. Dhawan to Shri Bhatnagar on telephone. The approval of the Prime Minister to the fresh proposal was received the same evening i.e. on February 10, 1976. The names which were dictated to Shri Bhatnagar and included in the proposal of Shri Raj Bahadur were ultimately approved by the then Prime Minister on February 10, 1976, resulting in certain changes. Shri Raj Bahadur's proposal contained the names of Capt. A. M. Kapoor, Regional Director, Calcutta, who was junior to Shri V. Satyamurthy, who was then the Deputy Managing Director, for appointment as Director of the Indian Airlines Corporation. The names, which were dropped from the earlier proposal submitted by the Ministry were Shri S. Y. Ranade, and Shri K. G. Appuswamy from the Air India and Shri S. Y. Ranade and Shri V. Satyamurthy from the Indian Airlines Board.

7.177 Air Chief Marshal P. C. Lal, who was the Chairman and Managing Director of the Indian Airlines, was dissatisfied with the omission of the name of Shri V. Satyamurthy. He made a representation to the Minister Shri Raj Bahadur. He also submitted a representation to the Prime Minister in this behalf and ultimately submitted his resignation because his suggestion for reconsideration was not accepted.

7.178 For appointments of the non-official Members of the two Boards the Ministry did not seek the advice of the P.E.S.B. Also the Ministry did not consult the Chairman of the two Boards before finalisation of the proposals. The proposal for a reconstitution of the two Boards was not sent to the Establishment Officer, which is the normal procedure for seeking approval of Appointments Committee of the Cabinet, and the proposals were sent by the Minister directly to the Prime Minister and her approval was obtained before the Establishment Officer was requested to obtain the formal approval of the Appointments Committee. This was done without consulting the Secretary of the Ministry. The Department of Personnel and Administrative Reforms were not even aware of the developments of the case and though the proposal was sent by Shri Raj Bahadur and had been approved by the Prime Minister on February 10, 1976, the Joint

Secretary, Department of Personnel and Administrative Reforms informed the Secretary, Ministry of Tourism and Civil Aviation through a D.O. letter dated February 9/11, 1976, that it was understood from the Prime Minister's Secretariat that the Minister of Tourism and Civil Aviation was reconsidering the proposals for the reconstitution of the Boards; and, therefore, no action was being taken on the Secretary's communication dated January 7, 1976.

7.179 The approval of the names of the Directors were notified on February 13, 1976. On the same day the Establishment Officer was requested to obtain formal approval of the Appointments Committee of the Cabinet, which was communicated by the Establishment Officer on February 27, 1976.

7.180 It appears from the evidence of Shri Raj Bahadur that he was not a free agent in the matter of making recommendations. He had submitted his recommendations on January 7, 1976. During his absence his Special Assistant was directed to submit a fresh list omitting certain names and adding certain other names. Shri R. K. Dhawan, Additional Private Secretary to the Prime Minister suggested that without reference to the Secretary to the Ministry, under his own signatures Shri Bhatnagar may send the list to the then Prime Minister, but Shri Bhatnagar declined to do so. When the Minister returned, he carried out the suggestions which were made. Apparently, there was nothing against Shri V. Satyamurthy, who was dropped from the list of Directors. In protest against the dropping of Shri V. Satyamurthy from the list, the Chairman of the Indian Airlines Board, Air Chief Marshal P. C. Lal finding that he was unable to secure any reconsideration for Shri V. Satyamurthy and that even his representations made to the Prime Minister had not been considered, submitted his resignation.

7.181 It appears that Air Chief Marshal P. C. Lal was subjected to police surveillance till he left his office.

7.182 Smt. Gandhi was served with a notice under rule 5(2)(a) of the Commissions of Inquiry Rules and summons under section 8B of the Commissions of Inquiry Act in connection with this case. She did not file any statement and when she appeared before the Commission, she refused to make any statement on oath. Under the circumstances, therefore, the Commission has no alternative but to draw an adverse inference against her in view of the circumstances and in the light of the evidence available on the record.

7.183 In this case, it appears that the normal or established procedure in regard to the appointment of the Board of Directors was not followed and Minister Shri Raj Bahadur was practically compelled to fall in line with the suggestions made by the then Prime Minister, Smt. Gandhi, and it was only after the suggestion made by her was carried out that the lists submitted were approved.

7.184 In this case, as in many other cases, the instructions issued from the Prime Minister's office were oral and given by the Additional Private Secretary to the Prime Minister. Though pursuant to these instructions Shri Bhatnagar himself failed to act, as

desired by Shri Dhawan, the Minister complied with these instructions on the lines suggested by Shri Dhawan.

7.185 The role of oral instructions in the transactions of business of the Government needs to be defined and definite guidelines set down. To the Commission this seems imperative, not only in the interest of healthy administration, but also to protect the junior functionaries acting on the oral instructions of the seniors from the consequences of subsequent denials by the seniors when things go wrong.

15. *Decision process leading to the purchase of three Boeing 737 aircraft by Indian Airlines.*

7.186 A special group was constituted to study the proposal for augmentation of capacity in the Indian Airlines in May, 1976. The group was to study the various aspects dealing with operational capabilities, financial terms and economics of the aircraft available in the market and recommend the most suitable aircraft fleet composition and programme of induction extending over the period from October, 1976 to March, 1979. This Committee dealt with the various technical details, airport constraints and financial evaluation of the various types of aircraft. While certain of the aircraft, such as, F-27 and BAC-111 were subjected to proving flights on Indian Airlines selected routes to study their operational performance figures, Boeing 737 was considered on the basis of technical data supplied by the manufacturer but without any route testing. The report of this Committee was placed before the Indian Airlines Board at its meeting held on August 16, 1976, and it was decided that an Interline Committee consisting of the Joint Secretary (Finance), Ministry of Tourism and Civil Aviation and the Managing Directors of Air India and Indian Airlines should study these proposals.

7.187 The Interline Committee had not finalised its views yet when on October 29, 1976, morning Shri P. N. Dhar, Secretary to the Prime Minister spoke to Shri N. K. Mukarji, Secretary, Civil Aviation, on phone. Shri N. K. Mukarji in his affidavit given to the Commission has stated that Shri P. N. Dhar had conveyed to him that it was the Prime Minister's impression that the Ministry of Tourism and Civil Aviation was obstructing the purchase of Boeing 737 aircraft by Indian Airlines. Shri Mukarji wrote back to the Secretary to the Prime Minister the same day indicating that there was no proposal about the purchase of aircraft by Indian Airlines pending with the Ministry. However, the Board of Directors of Indian Airlines had considered the matter and had referred it to an Interline Committee for detailed examination on August 16, 1976, which was yet to finalise its views. Shri Mukarji also informed Shri P. N. Dhar that the Minister had taken a meeting that morning at which it was decided to extend the deadline of the Boeings offer from the end of October, 1976 to December 31, 1976.

7.188 On the same day, i.e. on October 29, 1976, Shri N. K. Mukarji, Secretary, Civil Aviation and Tourism was sent for by Shri Raj Bahadur, the then

Minister of Civil Aviation, to attend a meeting, at which were present already Shri A. H. Mehta, Acting Chairman of Indian Airlines and Shri Kirpal Chand, Director (Finance) of Indian Airlines.

7.189 While the meeting was on, Shri Dhawan rang up Shri Raj Bahadur and Shri Raj Bahadur was heard to say :

"Yes, Dhawan Sahib, I am going into the matter with my officers, who are with me."

7.190 At this meeting Shri A. H. Mehta suggested that a letter of intent should be placed on the Boeing Company before their latest offer expired on November 1, 1976. Pending the receipt of the recommendations of the Interline Committee and final decision by the Indian Airlines Board, the Indian Airlines Management sent a letter on October 30, 1976 requesting for permission to issue a letter of intent to the Boeing Company in respect of purchase of three Boeing 737 aircraft. This letter was actually handed over to the Secretary at a Meeting held on October 30, 1976, and after discussion it was agreed that the requisite letter of intent could be issued subject to the condition that it did not involve any commitment for purchase of aircraft. However, it was also decided that the other manufacturers may also be approached and, if necessary, similar letters of intent may also be issued to them.

7.191 A meeting appears to have taken place in the second or third week of September, 1976, in the office of Shri A. H. Mehta, at which were present Shri Kirpal Chand, Director, Indian Airlines, Capt. A. M. Kapoor, Director of Operations and Shri Rajiv Gandhi son of Smt. Indira Gandhi. There are conflicting versions as to how Shri Rajiv Gandhi happened to be there in that meeting. Shri A. H. Mehta has stated that Capt. Kapoor had rung him up and asked him whether he could come along and discuss certain technical and maintenance problems along with an Avro Commander and Shri Mehta agreed to meet him; but when Capt. Kapoor came in, the Commander, who had accompanied him, happened to be Capt. Rajiv Gandhi. Shri Kapoor has, however, stated that Shri Rajiv Gandhi was already with Shri A. H. Mehta when Shri Kapoor came into the room of Shri A. H. Mehta, Shri Kapoor also stated that at this meeting Shri Kirpal Chand, Director (Finance), Indian Airlines had shown Shri Rajiv Gandhi the Financial projections. According to Shri Kirpal Chand he showed the financial projections to Shri Rajiv Gandhi at the instance of the Chairman, Shri A. H. Mehta. According to Shri Mehta's statement he did not remember having given any such directions to the Finance Director to show the financial projections to Shri Rajiv Gandhi. At this meeting, according to Shri Mehta, Capt. Kapoor is reported to have said that he did not understand why there was so much delay in the progress of the case dealing with the purchase of the Boeing aircraft, which, according to Shri Kapoor, were operationally and technically superior.

7.192 The Interline Committee made their recommendations on November 3, 1976, recommending the purchase of Boeing 737 aircraft. Shri Badal Roy,

who was Joint Secretary (Finance) in the Ministry of Tourism and Civil Aviation and who was a member of the Interline Committee, had, however, observed :

"Indian Airlines should adopt a total systems approach rather than an *ad hoc* interim solution, which might adversely affect the optimum long term solution, perhaps at heavy cost."

7.193 The Indian Airlines proposal for the purchase of three Boeing 737 aircraft was sent to the Ministry on November 20, 1976. The Airlines Board at its meeting held on November 24, 1976, approved the action of the Management in seeking Government's approval for purchase of the aircraft. Shri O. P. Mehra, Rt. Air Chief, however, opposed it on the ground that it was not based on any system study.

7.194 The proposal was received in the Planning Commission on November 26, 1976. The Planning Commission felt that "there was sufficient reason for believing that the acquisition of B-737 may not be appropriate and that a decision should not be taken without the completion of a system study".

7.195 Shri Niten Desai, Consultant in the Project Appraisal Division of the Planning Commission, who was examined by the Commission, stated that the system study could have been completed in about two months. Shri Desai had asked for a system study report to be obtained at the meeting which he had attended in the room of the Secretary Aviation, Shri N. K. Mukarji on October 30, 1976. Apparently, the Indian Airlines had not taken any steps pursuant to this suggestion of Shri Desai.

7.196 The matter was referred to the Public Investment Board, which considered the proposal at its meeting held on January 10, 1977, and January 13, 1977. The following important decisions were taken by the P.I.B. :—

- (i) A system study be undertaken and completed by the Indian Airlines by the end of February, 1977 ;
- (ii) If on the basis of an integrated study, it transpired that a new proposal involving a larger order of new aircraft emerged, the advantage of bulk purchase could be obtained;
- (iii) Indian Airlines could approach the manufacturers to hold both their price and delivery schedules using the leverage of possibly a large order.

7.197 According to Shri Kirpal Chand, they were all "upset at the decision of the P.I.B. to defer the augmentation of capacity pending completion of the Total System study". Shri Kirpal Chand said that after the meeting when they all went to the office of the Chairman, Shri A. H. Mehta, Shri Mehta remarked that "you technocrats have not been able to get the aircraft for me. Now I will get them for you". Shri Mehta has stated that immediately on his return from the P.I.B.

meeting, he got a phone call from the Minister for Tourism and Civil Aviation, Shri K. Raghuramaiah, who was "visibly annoyed over the postponement of the decision to purchase the Boeing aircraft". Shri Mehta does not corroborate what Shri Kirpal Chand has said regarding the technocrats not being able to get the aircraft, etc. He, however, admits that there was discussion between him, Shri Kirpal Chand and others; when he had said that the technical department had not been able to satisfy the Planning Commission.

7.198 Ever since Shri Raghuramaiah took over as Minister for Civil Aviation and Tourism on December 24, 1976, he was anxious that the case relating to the purchase of aircraft by the Indian Airlines should be processed urgently. He had spoken to the Secretary Shri N. K. Mukarji on more than one occasion. Shri Raghuramaiah has also stated that shortly after he took charge of the Ministry, during one of his visits to the Prime Minister's house in connection with some Parliamentary affairs matters, Shri Dhawan had told him that the Boeing purchase case was pending and was being delayed in his Ministry. Shri Dhawan wanted him to look into it. Shri Raghuramaiah took Shri Dhawan's reference to this subject as an order emanating from the Prime Minister. In support of this Shri Raghuramaiah said that as the Minister Incharge of Parliamentary Affairs, he had obtained the resignations of Shri Uma Shankar Dikshit, Shri Swaran Singh and Shri Raj Bahadur and a number of other Ministers, just because Shri Dhawan told him to do so. He took what Shri Dhawan had said as coming from the Prime Minister herself.

7.199 Shri N. K. Mukarji, Secretary, Aviation had advised the Minister that the recommendations of the P.I.B. should be accepted with regard to the system study, etc. However, the Minister overruled the Secretary's advice and directed that the matter be immediately referred to the Cabinet recommending purchase of three Boeing-737 aircraft.

7.200 On February 8, 1977, the Minister called Shri Kirpal Chand and told him that the proposal had been finally cleared by the Cabinet. The Minister also instructed Shri A. S. Bhatnagar, Joint Secretary, Aviation, to ensure that the formal approval was communicated to the Corporation the same day and the contract was signed immediately. The Ministry's sanction for purchase of three Boeing-737 aircrafts at a total project cost of Rs. 30.55 crores was issued to the Indian Airlines the same day i.e. February 8, 1977; and was delivered to Shri Kirpal Chand by hand on the same day. In the sanction it was mentioned, *inter alia*, that the Indian Airlines should further negotiate with the sellers and try to obtain the best possible terms for the three aircraft. According to Shri C. L. Dhingra, Deputy Secretary, Civil Aviation, the intention was to associate Joint Secretary (Finance) in the Ministry with the negotiating team. Even before the Ministry could inform Indian Airlines that the Joint Secretary (Finance) would be the representative on the negotiating team, the Indian Airlines informed the Ministry that they had signed the contract with the company on February 9, 1977; i.e. a day after the issue of the sanction and had obtained a further discount of

\$ 15,000 per aircraft. The Joint Secretary (Finance) was, thus, not associated with the negotiations with the Boeing Company.

7.201 Shri Raghuramaiah has stated that after the Cabinet meeting was over on February 5, 1977, at which the decision to purchase the Boeing aircraft was taken, the Prime Minister had told him about a report that had appeared in a Wall Street Journal about some deal with the Boeing Company. She had asked him to wait before the purchase order was placed; and three days thereafter she told him to "Go ahead. Place the order". Immediately after that he told his officers to sign the contract.

7.202 It would thus be apparent that the manner in which this deal was pushed through suffers from several infirmities:

- (i) Even before the Interline Committee, which was constituted by the Indian Airlines Board to study the proposal in depth and the comparative merits of the available aircraft, had submitted its report, the Indian Airlines Management sent a letter to the Ministry for permission to issue a letter of intent to the Boeing Company.
- (ii) The Indian Airlines submitted its proposal for purchase of the aircraft to the Ministry on November 20, 1976, and it was only later on November 24, 1976 that the Indian Airlines Board approved the action of the Management seeking the Government's approval for purchase of the aircraft.
- (iii) The Planning Commission's representatives had desired at the meeting held on October, 1976, that a system study should be undertaken by the Indian Airlines, which was capable of being completed within two months. But no steps were taken to complete this study.
- (iv) The P.I.B. categorically opposed the proposal pending the completion of the system study. The Secretary's recommendations to abide by the P.I.B.'s recommendations were turned down by the Minister, Shri Raghuramaiah; apparently because he had been asked by Mr. Dhawan to look into the matter urgently and Shri Raghuramaiah took the suggestion of Shri Dhawan as emanating from the Prime Minister.
- (v) According to the Finance Ministry, there was no instance of an Administrative Ministry going ahead with the proposal to the Cabinet for a decision against the recommendations of the P.I.B. This was done in this case.
- (vi) The decision to sign the contract was given on February 8, 1977. On February 9, 1977 the contract was signed. Actually, the delivery schedule limit given by the Boeing company had expired on February 7.

- (vii) The visit of Shri Rajiv Gandhi to the office of the Chairman of the Indian Airlines, where he was shown the financial projections by the Director of Finance, apparently under the instructions of the Chairman, was a procedure, which was totally outside the ordinary course of business.

7.203 In the light of the foregoing, the Commission feels that there has been a certain amount of avoidable haste in rushing through the deal.

16. *Detention of Smt. Gayatri Devi, Ex-Member of Parliament and Lt. Col. (Retired) Bhawani Singh under COFEPOSA Act, 1974.*

7.204 By two sets of orders passed by the Central Government on 24th July 1975, one being detention order under section 3(1) and the other being declaration under section 12A(2) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as COFEPOSA Act), Smt. Gayatri Devi and Lt. Col. Bhawani Singh were arrested and lodged in Tihar Jail at Delhi on 30th July, 1975. Smt. Gayatri Devi is the widow of late His Highness Maharaja Man Singh of Jaipur. She was a Member of Parliament as a Swatantra M.P. when she was arrested. Lt. Col. Bhawani Singh had been a full-time service officer in the Indian Army. He was the recipient of the Mahavir Chakra for his gallantry in the 1971 war with Pakistan. He voluntarily retired from Army service in November 1974 on personal grounds.

7.205 The Income Tax Department conducted some searches under section 132 of the Income Tax Act, 1961 in the month of February 1975 at Jaipur and Delhi residences of Smt. Gayatri Devi, Lt. Col. Bhawani Singh, his brothers and in other connected cases. During the course of these search operations, gold, gold ornaments, some foreign currency including U.S. Dollars and Travellers Cheques etc., were seized from the residences of Smt. Gayatri Devi and Lt. Col. Bhawani Singh. A key of a locker in Rome of Shri Bhawani Singh was also recovered.

7.206 After the news regarding searches by the Income Tax Department was known, there were questions in both the Houses of Parliament in the month of February and March 1975. Giving replies to various points raised in the Lok Sabha and Rajya Sabha, the then Minister of Finance, Shri C. Subramaniam and Shri Pranab Kumar Mukherjee stated that enquiries in these matters were in progress. Shri Pranab Kumar Mukherjee specifically stated in Lok Sabha on 4th March, 1975 that "no prosecution has yet been launched because we are not in possession of full facts".

7.207 Consequent to the information revealed during income tax searches, various documents and papers considered relevant from the point of view of violation of the provisions of Foreign Exchange Regulation Act were taken possession of by the Enforcement Directorate of the Ministry of Finance from the Income Tax Department and the said Directorate started making its enquiries. These two persons were issued directives

by the Enforcement Directorate under section 33(2) of the Foreign Exchange Regulation Act, 1973 for furnishing information on the various points mentioned in these directives. On requests being made, Smt. Gayatri Devi was allowed time upto 22-8-1975 and Lt. Col. Bhawani Singh upto 20th August, 1975 for making necessary compliance to these directives.

7.208 Even before the time allowed to these two individuals for complying with the directives issued had expired, action to impound the passport of Smt. Gayatri Devi was initiated and an order dated June 4, 1975 was passed by the Ministry of External Affairs impounding her passport. Also enquiries were made to find out ways and means for their arrest under one of the other provisions of the Acts administered by the Ministry of Finance.

7.209 A meeting is reported to have taken place in this connection in the room of the then Minister of State, Shri Pranab Kumar Mukherjee on July 24, 1975 which was attended, amongst others, by Shri G. S. Sawhney, Director General of Revenue Intelligence and Investigation. According to the statement of Shri G. S. Sawhney, he was asked either by the Minister or somebody else who was present in the meeting to find out whether any material which could be relevant for the purpose of COFEPOSA Act was available against Smt. Gayatri Devi and Col. Bhawani Singh. In his subsequent statement before the Commission, Shri Sawhney has stated that this meeting was some time before lunch, the question that was being discussed in the meeting related to the detention of these two persons and that it was imbued with a sense of urgency also. He was thereafter told to provide the factual information available with the Directorate to the Ministry. Shri Sawhney has further stated that in the meeting with the Minister, he got the impression that the Minister wanted the detentions to be made under COFEPOSA Act and that an order should be passed under section 3 of the COFEPOSA Act.

7.210 Shri Sawhney accordingly contacted the Director, Enforcement and later the Dy. Director, in charge of the Delhi Zone of the Enforcement Directorate and asked the Dy. Director to come over to his office along with the material that was available against the two persons. Accordingly Shri A. M. Sinha, Dy. Director processed the material that was available with him against both these persons in the room of Shri Sawhney, prepared two sets of notes concerning these two persons, showed these to his Director, Enforcement Shri S. B. Jain and passed these on ultimately to Shri Sawhney. While processing the material that was available with the Deputy Director of Enforcement against the two individuals, certain significant omissions were made in reproducing the information contained in the two letters which had been received from the Reserve Bank of India in response to queries made by the Enforcement Directorate concerning these two persons after income tax searches. The substance of the omitted portions from the Reserve Bank's two letters dated 6th March, 1975 and 5th July, 1975 was to the effect :

- (i) that the Reserve Bank was aware of the fact that the ex-ruler of Jaipur had owned an agricultural property and a flat in U.K. ;

- (ii) that the Reserve Bank was informed and had due knowledge about the three trusts which had been created in U.S.A., U.K. and Bahamas by the late ex-ruler of Jaipur;
- (iii) the Reserve Bank had referred the matter to the Ministry of Finance, Department of Economic Affairs, Government of India, as far back as 1969 through their D.O. letters Nos. EC. CO. FAS. 135/M(J-1)69 dated 31st July, 1969 to Shri Y. T. Shah and EC. CO. FAS. 71/12-72 dated 28th April, 1972 to Shri K. Subramanian and that the Government's reply to these two letters was still awaited and the Government had not advised the Reserve Bank what stand they should take in regard to these trusts.

These portions from the two letters of the Reserve Bank, if incorporated in the material that was compiled by the Deputy Director at the instance of the Director General of Revenue Intelligence and Investigation and approved by the Director (Enforcement) would have shown that as far as these two persons are concerned, they had not made any concealment in regard to the holdings of three trusts abroad and foreign property owned by Lt. Col. Bhawani Singh.

7.211 Shri A. M. Sinha, Deputy Director has stated in his statement before the Commission that these omissions were made probably at the instance of Shri Sawhney, DGRI&I who wanted only the relevant extracts of the letters and such portions from the RBI's letters as were mentioned to him were included by him in the annexures to his note of July 24, 1975. Shri Sawhney has said that he had only told the Deputy Director to process the material with reference to the relevant extracts. According to Shri Sawhney's statement, 'relevant' does not mean that whatever is relevant should be deleted or whatever comes in their favour should be deleted and this he could not have meant. The Commission views this omission with grave concern.

7.212 According to Shri Sinha, when he was asked to prepare the material, he was not told by any one that the material was being compiled with a view to detain Smt. Gayatri Devi and Lt. Col. Bhawani Singh. He came to know of their detention later through the television news. He has also stated that in the fortnightly report for August he did not include these cases as although these two persons were normally residing in the Delhi Zone of the Enforcement Directorate, proposals for their detention were not forwarded by him. The Director (Enforcement) Shri S. B. Jain has also, in his statement, said that in these cases the detention orders were not initiated by the Enforcement Directorate. The DGRI&I Shri Sawhney has also stated that he had never suggested detention in these cases. According to him, the briefs prepared by Shri Sinha and handed over to him did not amount to any proposal for detention under COFEPOSA Act but were prepared and passed on to the Ministry of Finance in order to give details of whatever information was available in the Enforcement Directorate. When the attention of Shri Sawhney was drawn to some of the notings

in the files of the Ministry of Finance where he was referred to as 'sponsoring authority' for these detentions, his reaction was that they had not initiated the proposal for detention and reference to him as 'sponsoring authority' was certainly a wrong terms to use.

7.213 The headings of the briefs prepared by Shri Sinha and subsequently endorsed by Shri S. B. Jain, Director, Enforcement and Shri G. S. Sawhney, DGRI&I also show that the notes contained information in respect of 'suspected violations of foreign exchange' and did not at all indicate that these were in the nature of proposals to the Government for detaining these two persons under the COFEPOSA Act.

7.214 According to Shri C. T. A. Pillai, Joint Secretary, the subject of detaining Smt. Gayatri Devi and Lt. Col. Bhawani Singh was discussed in the room of Shri Pranab Kumar Mukherjee on 24-7-1975 on the basis of a rough note with the Minister. When his personal opinion in this regard was asked for, he had mentioned that on the basis of the available material it seemed to him to be a marginal case. According to Shri Pillai, from the trend of the conversation between the Minister and the Finance Secretary, he got the impression that the question of detention of these two persons had already been considered and decided by the Minister in consultation with the senior officials or his colleagues. He felt that he had been called in merely to complete the formalities expeditiously.

7.215 Shri Pillai has further stated that in the meeting, the Minister had indicated that the Intelligence Bureau had reported that Smt. Gayatri Devi was already in or near Patna and may skip the country. Hence, orders under section 3(1) and declaration under section 12A(2) should be issued straightaway. Shri Pillai thereafter prepared the proposals for the detention and took these to the residence of Minister of State, Shri Pranab Kumar Mukherjee on the same date. Shri Mukherjee passed the following order in the case of Smt. Gayatri Devi :

"I am satisfied that Smt. Gayatri Devi should be detained as proposed. Ordered accordingly. Declaration may also issue."

Similar orders were also passed in the case of Lt. Col. Bhawani Singh.

7.216 It has been noticed that before taking a decision to detain these two persons under the COFEPOSA Act the Minister had explored the possibility of their arrest under the Customs and Gold Control Acts also. Some gold was also seized by the Income Tax Department during the course of searches made by it. Shri M. S. Mehta, the then Collector of Customs and Central Excise at Delhi, who was consulted in this connection by the Minister did not think that the material before him constituted a customs case.

7.217 In the process of executing the order, the services of the Home Ministry were utilised. Shri Narasimhan, Joint Secretary, Home Ministry entrusted the work to one Dy. S. P. of Delhi Police—Shri Harpal

Singh. Though in the meeting, according to Shri C. T. A. Pillai, the Minister is reported to have stated that Intelligence Bureau has reported that Smt. Gayatri Devi was already in or near Patna and may skip the country, Shri Narasimhan, it appears, was never told about this as he directed Shri Harpal Singh to proceed to Jaipur (and not to Patna) to execute the orders of detention. Shri Harpal Singh returned the following day and reported that the concerned individuals were not available in Jaipur. It is not understood as to why efforts were not made to send the officer for executing the order to Patna if Smt. Gayatri Devi was in or near Patna.

7.218 Eventually, the two persons were arrested on 30th of July in Delhi. No decision was taken at the time of the issue of orders about the Class in Jail where these persons were to be lodged. A note dated 1-8-1975 by Shri P. C. Jain, Deputy Secretary in the Ministry of Finance in File No. 705/20/75-CUS. IX shows that Shri Narasimhan, the then Joint Secretary (IS) informed him that keeping her in ordinary Class might invite adverse criticism and therefore the jail authorities were asked to treat these persons as 'security prisoners' and classified them accordingly. Subsequently, orders were passed prescribing conditions of detention giving them 'A' Class in the Jail. It is, however, pertinent to mention that Smt. Gayatri Devi and Lt. Col. Bhawani Singh did not get Class 'A' in jail as there was no such class in male and female Wards. Smt. Gayatri Devi was lodged in a separate room (Office Room) in the same compound where other 'C' Class prisoners were residing. Col. Bhawani Singh was put in 'B' Class Ward and was given facilities of 'A' Class prisoners in the matter of provision of furniture, food etc.

7.219 In ordering the detention of these two persons under COFEPOSA Act, the processes and procedures prescribed by the Ministry of Finance have not been followed. In this connection the following matters need to be mentioned :—

- (i) *Omission to refer their cases to the Screening Committee.*—A Screening Committee was formed at the Centre consisting of the representatives of the Ministry of Finance (Department of Revenue and Insurance), Department of Personnel, Ministry of Law and Directorate General of Revenue Intelligence and Investigation. The functions of this Committee were to advise the Government or the officer empowered for issuing detentions under section 3(1) of the COFEPOSA Act, 1974 on the desirability of detaining any particular person. The standards applied by this Committee, it appears were quite strict. According to Shri Sawhney, DGRI & I who was a Member of this Committee, "A good percentage of the proposals that came before the Committee for detention under COFEPOSA Act used to get rejected". From the information obtained from the Ministry of Finance and from the deposition of witnesses before the Commission, it has

been noticed that the departure from the practice of referring cases to the Screening Committee at the time of first detention was made in the case of these two persons only. Their cases were not referred to such Committee even for *ex post facto* approval by rotation of files. In reply to a question asked during the course of evidence as to whether if these two cases had been brought before the Screening Committee, the Screening Committee might have considered the matter and come to a conclusion that this was not a case in which the provisions of the COFEPOSA Act should be enforced, the reply of Shri Sawhney was that "this is quite possible". Shri Pillai, Joint Secretary in the Ministry of Finance has stated that he did not consider it necessary to refer the cases to the Screening Committee "since the Minister had already made up his mind, there was no need of Screening Committee's opinion".

- (ii) *Issue of Declaration under section 12A(2).*—Along with orders under section 3(1), a declaration under section 12A(2) was also issued in their cases. The adverse effect to which a person is subjected to on account of issue of a declaration under section 12A(2) is that it no longer remains necessary to disclose to the person the grounds on which the orders have been made and to refer such cases to the Advisory Board, which at the relevant time comprised of three High Court Judges. In the case of these two persons, no grounds were indicated as to why declarations under section 12A(2) were necessary.
- (iii) *Four monthly reviews under section 12A(2) of the COFEPOSA Act.*—Another safeguard provided in the Act is that in those cases where declarations have been issued under section 12A(2), there would be four monthly reviews to decide whether detention of such persons continued to be necessary for effectively dealing with the emergency. In the case of these two persons, such reviews were also made after four months but these seem to have been done in a routine manner. Shri C. T. A. Pillai's explanation for suggesting continuance of such detention on two occasions, when he was still looking after COFEPOSA work, is that he did not consider it necessary to put up detailed comments in this matter from his side "as the decision to detain these two persons was taken by the Minister".
- (iv) *Review in terms of guidelines issued in the year 1976.*—The cases of such persons were also not reviewed in terms of guidelines issued by the Government vide Confidential Circular F. No. 671/46/76-CUS. VIII dated 24th November, 1976. It was stated in this circular letter

that all the relevant material against the person to be detained has to be carefully assessed to ensure that detention orders are based on grounds which are adequate and that innocent persons are not victimised and that past cases should also be examined and recommended for review by the concerned detaining authority.

7.220 A very striking feature concerning these arrests seems to be the urgency with which the whole matter was processed in the course of one day—i.e. 24th July 1975 itself. What exactly transpired on 24th July 1975 which necessitated such expeditious action for issue of orders relating to arrest remains unexplained because Shri Pranab Kumar Mukherjee has not chosen to come before the Commission and give evidence.

7.221 After these two persons were arrested and lodged in Tihar Jail, they addressed two letters dated 22nd August, 1975, to Deputy Commissioner, Delhi Administration, Delhi, who forwarded these to the Ministry of Finance for necessary action. A request was made in these representations for release from detention mainly on health grounds. It was also stated in these representations that these persons had never indulged in any anti-national activities or smuggling activities etc. It was also stated by Smt. Gayatri Devi that whatever foreign exchange she was receiving through trusts abroad was fully taxed by the Indian Government and was regularly being declared by her in her Annual Wealth Tax and Income Tax Returns.

7.222 These representations were examined by the Joint Secretary, Shri C. T. A. Pillai on September 7, 1975 and he recorded a note posing whether both these persons should be temporarily released for a period of eight weeks. The Finance Secretary, Dr. H. N. Ray, endorsed the note of the Joint Secretary, Mr. Pillai, on the same day with the remarks that the note was recorded by Mr. Pillai in consultation with Mr. Ray. Thereafter the file was marked to MRE, the then Minister of Revenue and Expenditure, Mr. Pranab Kumar Mukherjee. Mr. Pranab Kumar Mukherjee recorded a note on September 7, 1975 which reads as under :—

“May be released on parole as proposed. However P.M. may kindly like to see.”

7.223 Shri Mukherjee marked this note to P.M. The Secret Movement Register maintained by the then Personal Staff of the Minister of Revenue and Expenditure, Shri Pranab Kumar Mukherjee, which has been put up before the Commission, shows that the relevant file bearing No. 686/100/75-CUS. VIII/75 with the notes of Shri C.T.A. Pillai and F.S. indicating the subject “Representation from Smt. Gayatri Devi and Shri Bhawani Singh” was marked to Shri Dhawan, A.P.S. to P.M. on September 7, 1975 and was sent in a sealed cover. What decision was taken by the Prime Minister in this matter is not indicated in the file, but it has been noticed that Shri Pranab Kumar Mukherjee pasted his earlier note dated September 7, 1975 recommending release on parole. If the note sheet page is put against bright light, the noting of S/39 HA/77—12

Shri Pranab Kumar Mukherjee reproduced earlier can be easily read. This file was put up before the Commission. Shri C.T.A. Pillai has also stated in his deposition that perhaps at the time of first parole, the file had gone to the Prime Minister.

7.224 After pasting his earlier note, Shri Mukherjee recorded another note on September 12, 1975 wherein he ordered the rejection of the request regarding the revocation of the order of detention. Since Shri Pranab Kumar Mukherjee has not chosen to appear before the Commission, and give evidence and explain the various matters attributable to him, it can only be inferred that his subsequent noting rejecting the request for revocation of the detention order may have been on the advice of the P.M.

7.225 Subsequent to rejection of their request on September 12, 1975, these persons moved applications for release on parole and these were accepted. Shri Bhawani Singh was ordered to be released on parole on 1st November, 1975 and Smt. Gayatri Devi on 9th January, 1976. It has, however, been noticed that Smt. Gayatri Devi, before her release, addressed a letter to the Prime Minister dated 11th December, 1975 from jail which reads as under :—

“As the International Women’s Year is coming to an end, may I take this opportunity to assure you, Madam, all my support to you in person and your programme in the interest and betterment of our country. May I also add that I have decided to give up politics ever since Rajaji’s demise and will not take any further interest in politics as the Swatantra Party has already defunct and I have decided not to join any political party.

In view of what I have stated above, as well as my deteriorating health, in spite of the medical facilities allowed and provided to me, may I request you for gracious considerations that I may be released. If there are any conditions which you want to impose, I will try to abide by.”

This was forwarded to the Prime Minister through Jail Superintendent and District Magistrate, Delhi, on 16th December, 1975. It has not been possible for the Commission to trace this letter from the Prime Minister’s Secretariat and find out what orders were passed by the then Prime Minister on the same.

7.226 Before her release on parole, the authorities in the Ministry of Finance also seem to have insisted that her request should be granted only if she is prepared to withdraw her writ petition ‘challenging her detention etc.’ pending before the Delhi High Court. The note of the Joint Secretary, Shri Pillai, which was approved by the Minister, Shri Pranab Kumar Mukherjee dated January 8, 1976 on this matter reads as below :—

“As M(RE) is aware, the detention of Smt. Gayatri Devi has been challenged in writ proceedings in the Delhi High Court. It is only proper that if her request for temporary release is acceded to, we insist on the writ

petition being withdrawn. On informal enquiries I understand that the petitioner would be willing to do so."

The duration of parole was extended from time to time on the conditions stipulated at the time of initial release. These conditions envisaged residence within the specified places, movement outside these places with the consent of the concerned Collectors of Central Excise, and execution of a bond with surety for a sum of Rs. 50,000.

7.227 The matter relating to the revocation of detention order finally came up before the Review Committee of the Department of Revenue on March 14, 1977. Before putting up the matter to the Review Committee, the comments of the then Director Enforcement, Shri S. B. Jain, were called for. Though Shri Jain had earlier stated that he is not concerned with these detentions, at this time he made a positive recommendation stating that the detaining authority may like to consider the release of Shri Bhawani Singh for the time being and the case of Smt. Gayatri Devi could be considered later on. The Committee considered the nature of the prejudicial activities attributed to the two persons and felt that a view could be taken for revocation of both the detention orders but left the matter for the decision of the Minister for Revenue and Banking. Shri Pranab Kumar Mukherjee thereafter passed the following order on March 19, 1977 :—

"Initially Col. Bhawani Singh may be released and his activities kept under close watch and the case of Smt. Gayatri Devi may be decided after some time."

Order of release of Smt. Gayatri Devi was passed by the Delhi Administration on 22nd March 1977 after the revocation of the proclamation of emergency.

7.228 The manner in which Smt. Gayatri Devi was treated in the jail makes a very poignant reading. She has narrated her experience in the jail before the Commission. The Assistant Jail Superintendent has also given a statement in this regard. She was not at all well when she was taken to the jail and was under medical treatment at the time of her arrest. According to her, the conditions in Tihar Jail were absolutely appalling; there was complete lack of sanitation, no running water, the public latrines had failed and therefore all the people who were in the prison had to use the drain to ease themselves. Rajmata Vijaya Raje Scindia of Gwalior was also brought to Tihar Jail and was kept in a 'Phansi Kothi', (Cell for condemned prisoners) for want of any other accommodation. This cell happened to be next to the room where Smt. Gayatri Devi was living. The treatment of the women prisoners in the jail was not at all good. Even the women prisoners who were pregnant were not treated properly so much so that one of the ladies gave birth to a child in the lavatory. Smt. Gayatri Devi wrote a letter to the Prime Minister at the instance of her son Jai Singh, who advised her that the only way of getting out of the jail was to write a letter to the Prime Minister. She had lost 10 Kgs in weight and her blood pressure was very low.

7.229 Shri Pranab Kumar Mukherjee was issued a notice under rule 5(2)(a) of the Commissions of Inquiry Rules. He declined to file a statement as required by the rules. He was also served with a summons under section 8B of the Commissions of Inquiry Act. He refused to give evidence on oath in pursuance of the summons issued under section 8B of the Act.

7.230 According to the guidelines issued by the Finance Ministry, the COFEPOSA Act was intended to be applied for dealing with the cases of smugglers, foreign exchange racketeers or such foreign exchange violations as were having a nexus with smuggling. It was not intended to be resorted to for dealing with minor infractions under the Foreign Exchange Regulation Act. It is clear on the basis of evidence that has been brought on record that these two persons had no nexus whatsoever either with smuggling or with foreign exchange racketeering. Shri G. S. Sawhney, Director General of Revenue Intelligence and Investigation has, during the course of his statement before the Commission, given a categorical 'no' when he was asked to state whether he had any reason to believe that these two persons belonged to any organised gang of smugglers. There is nothing on record also to show their connection in any way with such activities. Thus it is abundantly clear that in the cases of these two persons, the provisions of the COFEPOSA Act were not at all applicable and these were resorted to, to give effect to a pre-determined decision to arrest these two persons. At worst, these two persons may have been guilty of infractions of the provisions of the Foreign Exchange (Regulation) Act, for which proceedings were already in progress. Such infractions under FERA are not to be dealt with by detentions under the COFEPOSA Act, as was done in the cases of these two individuals in utter disregard of the policies and guidelines which had been laid down by the Finance Ministry.

7.231 It is thus clear on the basis of evidence that has been brought on record that Mr. Pranab Kumar Mukherjee, the then Minister of Revenue and Banking has misused his position and abused his authority in ordering the detention of Smt. Gayatri Devi and Col. Bhawani Singh on wholly insufficient grounds. It is a clear case of subversion of lawful processes and of administrative procedures.

17. Detention of Shri Bhim Sen Sachar and seven others.

7.232 Shri Bhim Sen Sachar, aged 82, veteran freedom fighter, and Ex-Governor Andhra Pradesh, Orissa, Ex-High Commissioner of India in Sri Lanka and Ex-Chief Minister, Punjab; and S/Shri Sewak Ram, Chairman, Delhi Branch of the Servants of the People Society; Vishnu Datt, Executive Secretary, Citizens for Democracy; K. K. Sinha, Advocate, Supreme Court; S. D. Sharma of Indian Service Mission; J. K. Sharma, Head of the Philosophy Department, Hans Raj College, Delhi University; Krishan Lal Vaid, Sarvodaya Worker; and J. R. Sahni of Adhyatama Sadhana Kendra, all around or above 60, had jointly addressed an open letter dated July 23, 1975 to

Smt. Indira Gandhi, the then Prime Minister of India. Some extracts from that letter are as follows :

- (2) "We are amongst the very humble of your fellow countrymen, just ordinary citizens interested chiefly in constructive work, none of us belonging to any political party. We have no political axe to grind nor are we interested in any political office or power. Our chief interest is in upholding the freedom and dignity of the individual."
- (3) "We regard Pandit Jawaharlal Nehru as one of the Principal architects of Indian democracy. He used to say 'No one, however great he may be, should be above criticism'. It was he who had said about the freedom of the press :—

"To my mind, the freedom of the press is not just a slogan from the larger point of view but it is an essential attribute of the democratic process. I have no doubt that even if the Government dislikes the liberties taken by the press and considers them dangerous, it is wrong to interfere with the freedom of the press. By imposing restriction you do not change anything; you merely suppress the public manifestation of certain things thereby causing the idea and thought underlying them to spread further. Therefore, I would rather have a completely free Press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press."

It was he who gave the memorable slogan when the British came down heavily upon us in the freedom struggle : 'Freedom is in peril, defend it with all your might'. We sorrowfully remember him for, had he been alive today, we have no doubt that he would have given the slogan : 'Democracy is in peril; defend with all your might'."

- (6) "We do not, we repeat, challenge your right to arm yourself with additional powers even when ample powers are with you already for dealing with offenders against law; what, however, we fail to appreciate is the denial of normal opportunities to the people—to all the people—to discuss openly the merits and demerits of Government measures. Our democracy is not yet out of the woods and many are bound to feel puzzled over what meets their eye."
- (7) "..... It would be an outrage on parliamentary democracy if even 'our Parliament's proceedings cannot be published without pre-censorship....."
- (8) "..... We hope with all our heart that the arrested members of Parliament will not be deprived of the opportunity to have

their say in the current session of Parliament. Was it really necessary to withhold from the public even the names of the political leaders and workers you have arrested and to deny facilities to their near and dear ones to meet them and arrange their legal defence, if any such defence is at all possible in the midst of present ordinances....."

- (9) "Apart from your political supporters, the common people of Delhi now talk in hushed tones as they do in communist societies; they do not discuss politics in the coffee house or at the bus stand and look over their shoulders before expressing any opinion. An atmosphere of fear and political repression prevails and politically conscious citizens differing from your viewpoint prefer to observe a discrete silence, with some of them afraid of the mid-night knock on their door."

- (10) "Must the monster of fear devour us again, the monster for the annihilation of which our beloved leader Pandit Jawaharlal Nehru had sacrificed his all—his riches, his comforts, his parents and even the dearest deity of his heart. He held fear to be enemy No. 1 of India's destiny. It is well to seek fresh inspiration from his memorable words :—

"The great gift for an individual or a Nation, so we have been told in our ancient books, was Abhaya (fearlessness), not merely bodily courage but the absence of fear from the mind. Janaka and Yajnavalka had said, at the dawn of our history that it was the function of the leaders of a people to make them fearless. But the dominant impulse in India under British rule was that of fear—perverse, oppressing, strangling fear; fear of the army, the police, the widespread secret service; fear of law meant to suppress. It was against this all pervading fear that Gandhi's quiet and determined voice was raised :

"Be not afraid'."

- (11) "The present situation looks every citizen in the face enquiringly and the old surviving freedom fighters in particulars. We must respond to the call. Accordingly, we propose, with effect from August 9, 1975 and regardless of consequences to ourselves, to advocate openly the right of public speech and public association and freedom of the Press, for discussing the merits and demerits of the Government arming itself with extraordinary powers. The intention is not to embarrass authority or to cause any unnecessary stir. Our self-suffering will just be an humble offering at the feet of the Motherland, in the breaking of whose chains we had been privileged to play our small part inspired by the mighty lead of the Father of the Nation."

7.234 This letter was received in the P.M.'s Secretariat and is available in their file. According to the affidavit of Mr. S. D. Sharma and depositions of S/Shri Sewak Ram and K. K. Sinha, this letter was delivered at the then Prime Minister's House on July 24, 1975. Shri Bhardwaj, a life member of the Servants of People Society stated before the Commission that he himself had delivered this letter at the P.M.'s house on July 24, 1975 and obtained an acknowledgement dated July 24, 1975 which was produced before the Commission. Shri Bhardwaj, when asked as to whom the letter was delivered, replied "I think to Mr. Dhawan" but actually it had been acknowledged by one Mr. M. N. Sharma, who was the P.A. in the Prime Minister's Establishment. Shri Sharma identified his signatures and confirmed that he had received the copy of the letter and signed the receipt on the day on which the letter was handed over to him. It is seen from the letter that it was diarised in the office of the Secretary to the Prime Minister. From the alterations made in the date and diary number of this letter, clearly visible in the letter, it appears that an attempt was made to make the date appear as 28th instead of the original 24th so as to show that the letter was received after these persons had been detained.

7.235 According to Shri Sushil Kumar, the then D.M., Delhi he had received a phone call from Shri Dhawan around 2.30 p.m. on July 24 or 25, 1975, to go over to the P.M.'s house. Immediately after his arrival at the P.M.'s house, he was also joined by Shri Bhinder, the then D.I.G. Shri Dhawan told Shri Sushil Kumar and Shri Bhinder that it had been decided that Shri Bhim Sen Sachar and seven others had to be arrested under MISA. The relevant extract from the deposition of Shri Sushil Kumar is reproduced below :—

"Chairman : Were the other names given to you ?

Witness: No, Sir, No Sir. Only Mr. Bhim Sen Sachar's name was mentioned and seven others. I asked as to what exactly had happened. Then I think it was Mr. Bhinder who probably mentioned that some communication had been circulated to the Prime Minister. This about all that was mentioned and the decision has been taken that these people should be arrested under MISA.

Chairman: Decision taken by whom ?

Witness : By the Prime Minister, Sir....."

7.236 While talks among these three were going on, Shri Sanjay Gandhi walked in and Shri Dhawan told him what he had been telling Shri Sushil Kumar and Shri Bhinder. According to Shri Sushil Kumar, the manner in which Shri Sanjay Gandhi reacted to what Shri Dhawan told him in the presence of Shri Sushil Kumar and Shri Bhinder about the directions for the arrest of Shri Bhim Sen Sachar and seven others, give him the impression that Shri Sanjay Gandhi knew that such a decision had been taken. Shri Sushil Kumar told Shri Dhawan that the latter would have to talk to Shri Krishan Chand, L.G. to obtain his clearance for

the arrest of these persons. Shri Dhawan said that he would talk to the L.G. Shri Sushil Kumar also stated that Shri Dhawan had assured him that the police authorities would take care of the material required for the detentions to be furnished to the A.D.Ms to enable the A.D.Ms to issue MISA warrants. Thereafter Shri Sushil Kumar went to L.G. The L.G. told him that he had been informed by Shri Dhawan about the arrests under MISA to be made, and that Shri Sushil Kumar should convey this decision to the A.D.Ms. Shri Sushil Kumar thereafter told the A.D.Ms that as soon as the request came from the police authorities for detention of Shri Sachar and seven others, it should be complied with.

7.237 Shri Krishan Chand, in his deposition before the Commission, has stated that he had received a call on RAX telephone from Shri Dhawan on July 25. Shri Dhawan told him that the Prime Minister had directed that Shri Bhim Sen Sachar and others should be arrested and that he had communicated the orders to the D.M., Delhi. Shri Sushil Kumar had also told him that he was called to the P.M.'s house and was told by Shri Dhawan that these persons had to be arrested because they had written some letter against the Emergency. To the query made by the Commission whether it was correct for the Commission to understand that directions for the arrests under MISA were passed by some one and the District Magistrate carried out these orders through the Additional District Magistrates, who were merely stamping authorities putting down their signatures, Shri Krishan Chand said that that was exactly what happened in this particular case. Shri Krishan Chand pleaded that his mind did not function on the propriety regarding these arrests, since the orders were communicated to him and to the D.C. in the name of the Prime Minister. Shri Krishan Chand said that he was absolutely certain that the P.M. herself had passed orders for the arrest of these persons because he felt that such eminent persons could not be detained without her sanction.

7.238 Accordingly, Shri P. Ghosh, the then A.D.M. (South) issued the detention orders under MISA in respect of five of the eight persons, namely, S/Shri Sewak Ram, S. D. Sharma, J. K. Sharma, Vishnu Datt and K. K. Sinha. In his written statement given to the Commission, Shri Ghosh has said that the detention orders were issued on the specific directions of the D.M., who had stated that it was the wish of the Prime Minister. In his deposition Shri Ghosh has said that the detention orders were issued even before the receipt of the material from the police. Actually, the material was received by the A.D.M. after the warrants had been issued but was sent pre-dated by the police. Therefore, there was no question of any satisfaction by the detaining authority on the material placed before him. This A.D.M. in his deposition also stated that in a large number of cases of detentions under MISA in Delhi the material on the basis of which detentions were made, was received subsequent to the issuance of the warrants of detentions; and, such as, there was no question of satisfaction of the detaining authority as contemplated in section 3 of the Act.

7.239 Smt. Meenakshi Dutta Ghosh, who had issued the detention order against Shri Bhim Sen Sachar has also stated in her written statement to the Commission that the order was issued on the specific directions of the D.M., Delhi who had stated that it was the P.M.'s wish. She has also stated that the grounds for the detention of Shri Sachar were received after the warrant had been issued and were sent pre-dated by the police. She admitted that she had not applied her mind to the grounds. Shri S. L. Arora and Shri Ashok Pradhan who had issued detention orders against Shri J. K. Sharma and Shri Krishan Lal Vaid respectively have also stated that these detention orders were issued under the directions of the D.M., Delhi, who told them that a decision to detain these persons under MISA had been taken. All the A.D.Ms. have frankly stated that there was no question of their feeling satisfied about the grounds of detentions.

7.240 The Commission has observed that the practice of issuing warrants of arrest, first and obtaining the pre-dated grounds of detentions thereafter had become the general pattern so far as the detentions of persons under MISA in Delhi during emergency were concerned.

7.241 Shri Bhinder, as usual, has totally denied his presence in the Prime Minister's house, as stated by Shri Sushil Kumar. However, Shri Prakash Singh, the then S.P. (North) has deposed before the Commission that he had moved the proposal for the detention of Shri J. K. Sharma, one of the signatories of the letter after Shri Bhinder had ordered him to this effect on telephone and also communicated to him the name, address and grounds for the detention of Shri J. K. Sharma. According to Shri Prakash Singh, Shri Bhinder had also told him that decision in this regard was taken at a higher level.

7.242 The grounds of detention compiled by the police against all these eight persons and furnished to the A.D.Ms. show that except in the case of Shri Krishan Lal Vaid the grounds were drafted almost entirely from the open letter addressed by these persons to Smt. Gandhi by distorting the thoughts set out in the letter. Reports on the activities of these persons received from the C.I.D., Special Branch, Delhi Police, revealed no worthwhile material in respect of these persons which could be interpreted as prejudicial to the security of the State and justify detention of any of these persons under MISA. It is clear that these persons were detained for having written an open letter to the then Prime Minister though the contents of the letter by themselves do not constitute adequate enough grounds to warrant their detention under MISA. These detention orders were executed on 25/26th of July and all of them except Shri Krishan Lal Vaid were transferred to the Central Jail, Ambala on the 26th of July, 1975, which added hardships to the family members of the detainees in the sense that their family members could not avail of the facilities of weekly interviews with the detainees without incurring considerable expenditure and undergoing strains of journeys. The Lt. Governor, Delhi, confirmed the detention orders in respect of Shri

J. K. Sharma on the 30th of July, 1975, Shri Krishan Lal Vaid on 1st August, 1975 and Shri Bhim Sen Sachar and others on 3rd August, 1975.

7.243 The wife of Mr. Bhim Sen Sachar filed a writ petition in the High Court of Delhi on the 6th August, 1975 challenging the detention of her husband. The detention orders against Mr. Bhim Sen Sachar were revoked by the Lt. Governor on 31st August, 1975, one day before the date fixed for hearing in the High Court of the writ petition filed by the wife of Shri Bhim Sen Sachar. The detention orders in respect of Shri Sewak Ram were also revoked on 31st August, 1975.

7.244 It is not understood why the remaining six detainees, all of whom were arrested along with Shri Sachar and Shri Sewak Ram were not released along with these two. Shri Krishan Chand has stated in this connection that in all matters relating to these detentions, viz., issuance of detention orders, confirmation and release, he was acting under the instructions of the then P.M. and if it had been on his own volition, he would have released the remaining six detainees also when M/s. Bhim Sen Sachar and Sewak Ram were released. Shri Vishnu Datt suffered a severe heart attack on 14th July, 1975 and in view of his serious condition the detention orders against him were also revoked by the Lt. Governor on September 16, 1975. Shri Krishan Lal Vaid, Shri K. K. Sinha, Shri J. R. Sahni, Shri J. K. Sharma and Shri S. D. Sharma suffered detention till 2nd of April, 1976. Their cases were reviewed mechanically during this period at the time of four-monthly reviews and the Lt. Governor affirmed their continued detention every time. On 2nd of April, 1976, the Lt. Governor approved the proposal to revoke the detention orders against the remaining five persons.

7.245 The story of detention of Shri Bhim Sen Sachar and seven others provides a classic example of the misuse of the provisions of MISA. The manner in which the police and the Magistrates went about compiling grounds and issuing the detention orders, should be a warning to any Government against giving such vast and arbitrary powers in the hands of authorities without providing effective and compelling safeguards against their possible misuse. This and similar cases which have come to the notice of the Commission reveal an undesirable trend in the administration of the Maintenance of Internal Security Act in the sense that when, as in this case, the Prime Minister felt satisfied about the detention of certain persons, instead of getting the orders issued by the Central Government, small functionaries like the Additional District Magistrates were directed to issue the warrants without they themselves being satisfied either about the need for detentions of the individuals concerned or the adequacy of grounds for their detention.

7.246 A notice under rule 5(2)(a) of the Commissions of Inquiry Rules and a summons under section 8B of the Commissions of Inquiry Act were issued to Mrs. Gandhi and Mr. R. K. Dhawan in this case. Smt. Gandhi did not respond to the notice.

When she, however, turned up in response to the summons under Section 8B, she refused to take the oath and tender evidence. Shri R. K. Dhawan responded to the summons under section 8B and led evidence. Shri Dhawan has stated that at about 1.30 or 2.00 p.m. on the day of the arrest of Shri Bhim Sen Sachar, Shri Sushil Kumar had gone to him and told him that they, thereby meaning L.G. and the detaining authorities, had taken a decision to detain 8 persons including Shri Bhim Sen Sachar because "the C.I.D. had intercepted some letter written by Shri Bhim Sen Sachar and they had apprehension that this will serve some sort of a think in Delhi and they wanted to arrest all the persons". The L.G. wanted this to be brought to the notice of the Prime Minister and ascertained whether she wanted any distinction to be made in the case of Shri Bhim Sen Sachar or not. According to Shri Dhawan he had consulted the Prime Minister and conveyed to Shri Sushil Kumar her reaction that it was a matter for the L.G. and the Delhi Administration to decide and that she had nothing to do with it. In reply to a specific query from the Commission, Shri Dhawan stated that the P.M. did not express any surprise about the contents of the letter. The relevant extract from the deposition of Shri Dhawan on this point is reproduced below :—

"Chairman : (Towards Mr. Dhawan) Now, did you come to know when Mr. Sushil Kumar came to you. Did you know that a letter was addressed by Mr. Bhim Sen Sachar and seven others to the Prime Minister, before that date ?

Witness: No, I did not know.

Chairman: Before that time ?

Witness: No, I did not come to know.

Chairman: Did the Prime Minister know about such a letter having been received ?

Witness: When I mentioned it to her that this is.....She said that is for the Delhi Administration, so I did not ask her.

Chairman: I just want to know. Did she express any surprise about the contents of the letter of what the letter was about. What was written in that letter.....

Witness: No, she did not tell anything.

Chairman: So, from that it appeared that a letter had been received.

Witness: Yes."

7.247 Shri Dhawan also confirmed that he had also spoken to the L.G. when the L.G. had rung up in some connection and told him that the D.C. had gone to Shri Dhawan in this connection and the P.M. had said that "It is none for me to decide. It is for Delhi Administration to decide".

7.248 The defence tendered by Shri Dhawan is not convincing. There is conclusive evidence to show that the letter was delivered at the PM's house on July 24, 1975, by Shri Bhardwaj, a Life Member of the

Servants of the People Society. There had been an effort made to tamper with the date and diary number of the letter so as to make it appear that the date of receipt was 28th and not 24th. Shri Dhawan has taken the defence that the detention was a sequel to a copy of the said letter coming to the notice of the Delhi Administration through interception. This theory is also not tenable. It is difficult to believe that the letter coming to the notice of the authorities through interception on July 25 could have led to such prompt action by way of detention under MISA on 25th itself against Shri Sachar and six others and on the 26th morning against the remaining one. This interception theory which has evidently been thought of as a foil against any possible criticism against the then Prime Minister, stands completely demolished from the replies to the questions put to Shri Sushil Kumar and Shri Krishan Chand by the counsel for the Commission in this connection. Shri Krishan Chand has said that he had come to know for the first time when Shri Dhawan telephoned him that the then Prime Minister had directed that Shri Bhim Sen Sachar and others should be arrested and that prior to that moment of time, no so-called interception of this letter had ever come to his notice. Shri Sushil Kumar has also confirmed that prior to his meeting with Shri Dhawan, he did not know of the existence of any letter written by these persons to the then Prime Minister.

7.249 There is yet one more infirmity in the theory of this interception. The Commission in the course of examining the Superintendent of Police, C.I.D., Shri K. S. Bajwa, brought out that on the day the copy of the letter was purported to have been intercepted, the C.I.D. did not enjoy any authority to intercept that letter. However, an order was passed by the Government on August 4, 1975, with retrospective effect covering the period from July 1, 1975, onwards.

7.250 In the light of the evidence brought on record, the Commission feels that the decision to detain Shri Bhim Sen Sachar and seven others was taken by Smt. Gandhi which she got conveyed to the authorities in Delhi Administration through Shri Dhawan. The only fault of these eight gentlemen appears to have been the open letter that they had addressed to Smt. Gandhi. *Prima facie* the contents of the letter do not warrant the authors of the letter to be detained under MISA. Smt. Indira Gandhi has abused her position and misused her power in ordering the arrest of Shri Bhim Sen Sachar and seven others.

18. *Improprieties committed in regard to Shri Mangal Behari, IAS of Rajasthan Cadre; and termination of the services of Smt. Chandrawati Sharma, Assistant Teacher.*

7.251 On August 20, 1975, the Chief Secretary, Rajasthan, initiated the following actions :—

- (a) A top secret d.o. letter No. 5993/CS/1, dated August 20, 1975 was addressed to District Magistrate, Jaipur, desiring that Shri S. N. Sharma, Advocate, be detained

under MISA on certain grounds mentioned therein;

- (b) A top secret note was sent to the Education Commissioner to the effect that the University may be asked to terminate the services of Smt. Chandrawati Sharma, because on information received, the Government was satisfied that she was an active follower of Anand Marg and her continuance in service was not desirable in the interest of the University or of the public;
- (c) A top secret d.o. letter dated August 20, 1975 was addressed to the Inspector-General of Police, Rajasthan for initiating inquiry into the conduct of Shri Gaur, Additional Superintendent of Police, Jaipur;
- (d) Shri Mangal Behari, IAS, the then Member, Board of Revenue, Rajasthan, was told on 20th August, 1975 to apply for leave.

7.252 Pursuant to the d.o. letter of the Chief Secretary dated August 20, 1975, the District Magistrate, Jaipur, detained Shri S. N. Sharma, under MISA on the same day. The detention orders were confirmed by the State Government with the approval of the Chief Minister subsequently.

7.253 On receipt of the top secret Note concerning Smt. Chandrawati Sharma, the Education Commissioner, sent instructions to the Joint Director (Women), Jaipur—Ajmer Range, through a letter dated August 23, 1975 :—

"On the basis of information received the Government is satisfied that Smt. Chandra Sharma w/o Shri S. N. Sharma, Advocate, * * * who is working as Assistant Teacher, in Maharaja Girls Higher Secondary School, Jaipur is actively associated with an organisation declared illegal and her continuance in service is not desirable in public interest.

"You are, therefore, requested to terminate her services forthwith, under intimation to the undersigned."

On August 23, 1975, the Joint Director, accordingly terminated the services of Smt. Chandrawati Sharma with immediate effect and informed all concerned, including the Education Commissioner in that behalf.

7.254 Pursuant to a letter dated August 20, 1975 addressed to the Inspector General of Police, Rajasthan, inquiry was conducted against Shri R. N. Gaur. A report was received from the Inspector-General of Police on September 3, 1975 exonerating him.

7.255 Shri Mangal Behari was also asked on the 20th of August, 1975 by the Chief Secretary to go on leave.

7.256 All this action simultaneously taken against three public servants and Shri S. N. Sharma Advocate, was because of an intimation received from Shri R. K. Dhawan, Additional Private Secretary to the then

Prime Minister of India earlier in the morning of that day on phone.

7.257 Shri Harideo Joshi, the then Chief Minister of Rajasthan has deposed that he received a telephonic message on August 20, 1975 from Shri R. K. Dhawan, Additional Private Secretary to the then Prime Minister and that he conveyed certain information. He stated that he recorded the information conveyed to him in Hindi on a slip of paper and, thereafter, he recorded the note in English, after discussion with his officers, to the following effect:—

"Shri R. K. Dhawan, Private Secretary to the Prime Minister rang me up to convey the following:—

1. Shri S. N. Sharma, Advocate, 74-Sarojini Marg, Jaipur, is reported to have burnt records relating to his and his wife's activities as followers of Anand Marg, Shri R. N. Gaur, Addl. S.P., in spite of being informed about the burning of records, did not reach in time and allowed the records to be burnt. It was desired that Shri S. N. Sharma should be detained under MISA.
2. His wife Shrimati Chandra Sharma, Lecturer in Maharani's College, Jaipur, should be removed from service.
3. An enquiry should be conducted immediately in the conduct of Shri Gaur.
2. It was also desired that Shri Mangal Behari IAS should also be relieved from service.

"Please take necessary action.

Sd : Harideo Joshi

20-8-75.

Chief Minister, Rajasthan."

7.258 After Shri Harideo Joshi, then Chief Minister communicated the information received from Delhi to the Chief Secretary, an order of detention was passed against Shri S. N. Sharma under MISA on August 20, 1975. Shri G. Ramachandra, the then Collector and District Magistrate, Jaipur, has stated that from the letter of the Chief Secretary it was "very clear that no discretion was left with me in not arresting Shri S. N. Sharma. In spite of this order, before passing the order of detention, I had before me the report from District Superintendent of Police, Jaipur.... requesting his detention under MISA. Before passing the order of detention, this report was also in my view."

7.259 There was, it appears, evidence before the District Magistrate, received through proper channels, that Shri S. N. Sharma had joined Anand Marg in 1963 and had since then been meditating regularly on the lines of Anand Marg, and that he had been widely advocating for the Anand Marg when the Government of India had banned that organisation; and hence his activities had posed a threat to the internal

security of the country. The Station House Officer also recommended the detention of Shri S. N. Sharma under MISA on the above grounds. The report, which originated from the Police Station on August 20, 1975 reached the District Magistrate through two intermediaries on the same day. The d.o. letter of the Chief Secretary addressed to the District Magistrate desiring detention of Shri S. N. Sharma under MISA also reached the D.M. on August 20, 1975. Shri R. K. Dhawan's instructions to the Chief Minister were also received on August 20, 1975.

7.260 The proceedings for detention do disclose an extraordinary expedition in the implementation of the order received from Delhi through the local channels. An order intimated by the Additional Private Secretary of the Prime Minister to the Chief Minister and communicated by the Chief Minister to the Chief Secretary was implemented on the same day. Since, however, there was evidence before the authorities on which action under MISA could be taken, the Commission did not find that there was any evidence to establish that there was misuse of power or abuse of authority in the arrest and detention of Shri S. N. Sharma. It may, however, be observed that the action for arrest and detention of Shri S. N. Sharma under MISA was directed from Delhi by the Additional Private Secretary speaking on behalf of the Prime Minister Smt. Gandhi on the 20th of August, 1975, on phone to the Chief Minister. It was communicated to the Chief Secretary on the same day and the official machinery went into immediate action and the order was implemented and the arrest and detention of Shri S. N. Sharma were effected on the very same day. In coming to the conclusion that there is no proof of abuse of authority or misuse of power in the arrest and detention of Shri S. N. Sharma, the Commission is impressed by the circumstances that on August 14, 1975, the Joint Secretary in the Ministry of Home Affairs, New Delhi, had forwarded the name of certain persons who were active in the Anand Marg Organisation, which was a banned organisation in the State of Rajasthan and it was recommended that efforts should be made to arrest those persons who were still at large. The name of Shri S. N. Sharma was included in the list sent by the Ministry of Home Affairs.

7.261 Smt. Chandrawati Sharma was an employee of the Education Department in the Girls School at Jaipur. Her name was not included in the list of Anand Margis furnished by the Ministry of Home Affairs. It appears, however, that the Home Commissioner of the State Government of Rajasthan had addressed a d.o. letter to the Inspector General of Police on August 19, 1975, for his comments on the list dated August 14, 1975 received from the Ministry of Home Affairs. The Inspector General of Police sent a reply to the Home Commissioner giving progress report of arrests of activities of banned organisations and this report also does not refer to Smt. Sharma. Action was taken against Smt. Sharma, therefore, not at the instance of the Home Commissioner; but only on the instructions received from the Chief Secretary by the Joint Director (Women) Jaipur. The instructions for termination of the services of Smt. Sharma clearly emanated from the Chief Minister, who had

received orders in that behalf from Shri R. K. Dhawan. The records of the State Government show that Smt. Chandrawati Sharma sought interview with the Education Commissioner on more than one occasion after the termination of her services and tried to impress upon him verbally as well as through written representations that she had been made a victim of personal animosity between her husband and their landlord, Shri B. B. Gupta. She also produced a letter from Shri B. B. Gupta, the landlord, in support of her contention. The Education Commissioner brought this matter to the notice of the Chief Secretary.

7.262 Smt. Chandrawati Sharma has stated before the Commission that she felt that Kumari Pushpa Khanna who lived with Professor B. B. Gupta and was "connected" with him may have had a hand in complaining against her at the Centre through one Shri P. N. Katju who also lives in their locality and who is on visiting terms with Smt. Gandhi. Kumari Pushpa Khanna is also quite close to Shri P. N. Katju.

7.263 Smt. Chandrawati Sharma has also stated before the Commission that she had two meetings with the Chief Minister at which she handed over representations made by her. She was, however, told by the Chief Minister that there was nothing against her in the state and that he had acted only on the directions received from Delhi and that if she desired to obtain any redress she must approach the authorities in Delhi.

7.264 As observed earlier, the name of Smt. Chandrawati Sharma did not appear in the list of activists of the Anand Marg sent by the Ministry of Home Affairs to the State Government nor had the State Government any record with regard to her activities as an Anand Margi. Smt. Chandrawati Sharma was an employee in the Education Department of the Government of Rajasthan and was accordingly a public servant. She was entitled to the protection of Article 311 of the Constitution of India. She could not be dismissed or removed from service except after an enquiry in which she had been informed of the charges against her and given reasonable opportunity of being heard in respect of those charges. It is true that enquiry may be dispensed with in certain exceptional classes of cases falling within (a), (b) and (c) of the proviso to Article 311(2) of the Constitution but no action to dispense with an enquiry appears to have been taken. This discloses a clear case of abuse of authority and misuse of power contrary to the provisions of the constitution. Smt. Chandrawati Sharma was entitled to the Constitutional protection but in defiance of the provision her services were terminated without holding any inquiry and without dispensing with the holding of an enquiry as permitted by the Constitutional provisions. The termination of employment of Smt. Chandrawati Sharma was ex-facie unauthorised and carried out only on account of the directions received by the Chief Minister from Shri R. K. Dhawan.

7.265 As observed earlier, an inquiry was held against Shri R. N. Gaur and he was exonerated of any remissness in the performance of his duties. The

intimation was received from Shri Dhawan by the Chief Minister for suspending Shri Gaur immediately. This intimation was later countermanded by Shri Dhawan when Shri Joshi rang back Shri Dhawan according to the story of Shri Harideo Joshi, and it was suggested that instead of suspending Shri Gaur immediately an inquiry should be made into the conduct of Shri Gaur, and pursuant to this intimation Shri Harideo Joshi recorded in his note, which has been set out earlier, that an enquiry should be conducted immediately.

7.266 Shri Mangal Behari is a member of the Indian Administrative Service. He was formerly Chairman of the Rajasthan State Electricity Board. He was transferred from that office on the 30th of June, 1975 to the office of the Revenue Board at Ajmer and on August 20, 1975 he was directed by the Chief Minister to go on leave. Shri Mangal Behari made several representations, both to the Chief Minister and also to the Ministry of Home Affairs and to the Prime Minister's Secretariat but to no avail. Ultimately, he was reposted on December 15, 1976. The file in which the recommendation was made that he should be reposted remained in the Prime Minister's Secretariat for a period of ten months between the 3rd of February, 1976 to 8th of December, 1976; and even when an order was made for reposting him, Smt. Gandhi made a note on December 8, 1976 to the following effect:—

"Yes. But an eye should be kept on him from time to time.

Sd : Indira Gandhi".

Accordingly, the formal decision was communicated to the State Government on December 15, 1976 and Shri Mangal Behari was allowed to resume duty.

7.267 According to Shri Mangal Behari, he was till 1971 a member of the Anand Marg, but solely concerned with the spiritual side of that organisation. He further stated that he had severed all connections with that institution, thereafter, but he had been victimised because he had declined to make available the trucks of the Electricity Board free of charge for carrying workmen of the Electricity Board to Delhi to participate in a rally to be held on June 20, 1975 at the Boat Club to express solidarity and support to the then Prime Minister, Smt. Indira Gandhi in the wake of the Allahabad High Court Judgment.

7.268 According to the evidence of Shri Rajendra Jain the then Secretary, RSEB on or about June 17, 1975 he was called by the then Transport Minister, Shri Mohan Chhangani at his residence, who asked him to arrange for sending 5,000 persons from the State Electricity Board to the rally being organised in Delhi in support of the then Prime Minister Smt. Indira Gandhi, and that the persons who had to go to Delhi to participate in the rally were to be arranged by the Electricity Board and arrangement for their transport to Delhi and back had to be made by the Electricity Board. Shri Rajendra Jain informed the Minister

that it was impossible on the part of the officers of the Electricity Board to ask the persons working in the Electricity Board to go to Delhi and also informed that it was difficult for the Electricity Board to supply its own trucks for carrying these persons to Delhi. He was informed that a decision had been taken at the highest level and that the Chief Minister was in Delhi and he had deputed the Transport Minister to organise the rally in Rajasthan and that he was making these arrangements at the behest of the Chief Minister. Shri Rajendra Jain has further stated that his Chairman, Shri Mangal Behari had told him that he also was being pressurised to arrange the conveyance to Delhi and back of at least those persons, who were working in the State Electricity Board.

7.269 Shri Mangal Behari has said in his deposition that he had gone and met the Chief Secretary and told him: "How can this order be complied with?" As advised by the Chief Secretary, when he later met the Chief Minister, the C.M. was "very brief and very curt" and said that "You do not recognise Chairman, Shri Mangal Behari had told him that he C.M. to meet the Power Minister.

7.270 Ultimately it was arranged that a request should be made by the General Secretary of the Trade Union that trucks of Rajasthan State Electricity Board be made available for enabling the workmen to attend the General Body meeting of the Workers' Federation at New Delhi as also to participate in the rally at the Boat Club on June 20, 1975 in support of Smt. Indira Gandhi. Accordingly, a request was received in writing and was passed on to the Chief Engineer with the instructions by the Chairman on the basis of which he issued an order placing certain number of trucks at the disposal of the Union on certain conditions. This is supported by the evidence of Shri Damodar Maurya, who stated that on June 16, 1975, Shri Harideo Joshi, Chief Minister, Rajasthan had invited him to a meeting of number of persons including himself at Delhi and had informed that a grand national rally was going to be organised on June 20, 1975, in which the State of Rajasthan should send near about 1 lakh persons and that Shri Harideo Joshi had assured that every transport arrangement shall be made through the Government. The arrangement for carrying the employees of the Rajasthan Electricity Board was to be made by the Electricity Board and the employees were to join the rally—the workmen being given the special paid leave.

7.271 Before sending the employees to the rally at Delhi, a meeting was held at the residence of Shri Mohan Chhangani, Transport Minister, according to Shri Maurya, on June 18, 1975, in which the Chief Secretary of the Government of Rajasthan, along with Shri Rajendra Jain, Secretary of the Rajasthan State Electricity Board were present. The Transport Minister said at that meeting that the trucks would be arranged by the Rajasthan State Electricity Board requesting for supply of trucks for carrying workers to Delhi to attend the General Body meeting of the Federation and to participate in the Boat Club rally at Delhi on June 20, 1975. On receipt of an intimation from the Rajasthan State Electricity Board regarding allotment of 58 trucks on payment basis

and subject to certain conditions he approached the then Transport Minister and refused to comply with any of the terms set out by the Board, as this was against the assurance given by the Chief Minister at Delhi. Shri Mohan Chhangani the then Transport Minister told him that the Board's letter was only a formality and that no charge will be made from the Federation or from the workers who go to attend the rally at Delhi. Shri Maurya has stated before the Commission that it was not possible to call a general body meeting at such a short notice nor was it in fact called as he was told by Shri Mohan Chhangani, Transport Minister, that a mention of this was required only for the purpose of getting the special paid leave and the trucks for the workers. Accordingly, no place for holding the general body meeting was selected in Delhi nor invitations were sent for the same. According to the statement of Shri Maurya, workers numbering about 5,000 who were taken in the trucks of the Electricity Board took part in the rally on June 20, 1975 at Delhi. Those workers who had taken part in national rally at Delhi were given three days' special casual leave with pay. As per evidence before the Commission it is seen that no route permits were obtained from the Rajasthan Transport Authority as required under the Motor Vehicles Act for taking the trucks out of the limits of the Rajasthan State and for the journey to Delhi.

7.272 Bills in respect of the use of Electricity Board trucks by the workers' union were sent by the Board to Shri Maurya who stated by his letter dated April 20, 1977 that the charges of trucks issued by the Management for workmen to join the rally organised on June 20, 1975 were not payable by the Trade Union because the arrangement was made by the management and the bills should, therefore, be charged from the Rajasthan State Government.

7.273 Shri Mangal Behari has, it is true, stated that he was associated with the Anand Marg sometime before the year 1971, but he had severed his connection with that organisation. He further stated that on 19th of June, 1975, he had passed an order that the trucks should be made available on payment of the appropriate charges and after obtaining the requisite permits, and since he did not follow the suggestion made by the Chief Minister, he was victimised by being first transferred from his office as the Chairman, which was a very prestigious office to a comparatively unimportant office and thereafter he was asked to go on leave and for a major part of that period he received no remuneration at all. This, according to Shri Mangal Behari, was intended to be a penalty measure taken against him because he stood up against the unauthorised demand for utilising the State trucks in support of a party activity of the Congress Government, to which party the Chief Minister belonged.

7.274 The evidence establishes that there was abuse of authority in directing the termination of employment of Smt. Chandrawati Sharma; in transferring Shri Mangal Behari from the Chairmanship of the Rajasthan State Electricity Board and later compelling him to proceed on leave, and also in directing the inquiry against Shri R. N. Gaur.

7.275 According to the evidence of Shri Harideo Joshi, the original intimation received from Shri Dhawan contained a direction that Shri Gaur should be suspended and that Shri Mangal Behari should be relieved from service. According to Shri Harideo Joshi, he after consulting his officers rang up Shri Dhawan again and Shri Dhawan agreed to only an inquiry being held against Shri R. N. Gaur. Even though there was a direction to relieve Shri Mangal Behari of his office, no such action could immediately be taken by the State Government according to law because Shri Mangal Behari was an IAS officer posted to Rajasthan cadre and his compulsory retirement could only be ordered by the Central Government in consultation with the State Government.

7.276 The circumstance that action, as initially directed by Shri Dhawan was not taken according to the strict tenor and there was some modification made in regard to Shri R. N. Gaur and Shri Mangal Behari, does not, in the view of the Commission, amount to any substantial change. It is still an abuse of authority, when pursuant to the directions given by Shri Dhawan, Shri Harideo Joshi has purported to hold an inquiry against Shri R. N. Gaur and has directed Shri Mangal Behari to proceed on leave; and kept him continuously on leave right till 15th of December, 1976.

7.277 Shri Harideo Joshi is the person, who gave the instructions. He has stated before the Commission that when he handed over the note of the instructions received from Shri Dhawan and as recorded by him to his Chief Secretary, he expected that action would be taken according to law. He did not intend that action was not to be taken according to law. But the manner in which the action was taken, the expedition with which the orders were carried out in respect of Shri S. N. Sharma, Smt. Chandrawati, Shri R. N. Gaur and Shri Mangal Behari clearly indicate that no option was left to the Chief Secretary, but to carry out the orders, as directed. It does not appear to be the understanding of the Chief Secretary or of the subordinate officials that they were to regulate the directions of the Chief Minister according to law and take such action as was permissible and after satisfying themselves whether, in law, such action should be taken. In any event, the action against Smt. Chandrawati Sharma was wholly unjustified. There was no scope for action being taken against her by relieving her of her office as a teacher in the Maharaja's Girls School without giving her an opportunity, as provided by Article 311 of the Constitution. There was no order from the Governor dispensing with an inquiry on any of the grounds provided in the proviso to Article 311.

7.278 In these circumstances, it is established that Shri Harideo Joshi directed his subordinate officials to carry out the directions recorded by him as received from Shri Dhawan.

7.279 Shri Harideo Joshi was served with notice under Rule 5(2)(a) of the Commissions of Inquiry

Rules and summons under section 8B of the Commissions of Inquiry Act. The Commission has taken into account his statement as also the evidence led by him.

7.280 Shri Harideo Joshi has taken two different stands. When it came to Shri Dhawan he took the line that he acted as he was told to do by Shri Dhawan which he thought were in fact the orders of the Prime Minister. In the case of Shri Gaur he had sought and obtained clearance from Shri Dhawan for not suspending Shri Gaur. As for Shri Mangal Behari, he had asked him to proceed on leave even for which his Chief Secretary had obtained the clearance of Joint Secretary, Shri P. N. Bahl in the Prime Minister's Secretariat. Regarding the action taken on the others, namely Shri and Smt. Sharma, Shri Joshi had taken the plea that when he marked the papers to the Chief Secretary "for necessary action", he intended that action would be taken by the officers according to law. The Commission feels that actually action was taken by the officers as desired by the Chief Minister and not according to law. Shri Joshi himself has mentioned in his statement before the Commission that he felt that he was left with no option but to carry out the directions as conveyed to him by Shri R. K. Dhawan. He cannot escape the responsibility for what followed both with regard to Smt. S. N. Sharma's termination of services and the long period that Shri Mangal Behari had to remain on leave. During his statement before the Commission, Shri Harideo Joshi has himself conceded that a mistake was committed in the case of Smt. Sharma. Shri Joshi has thus misused his position, subverted the established administrative procedures and abused his authority in terminating the service of Smt. Sharma without observing the Constitutional provisions.

7.281 The next question relates to the involvement of Shri Dhawan and Smt. Indira Gandhi. According to Shri Dhawan, he merely read out the CBI report, which had been received by him from the Prime Minister and he gave no directions to Shri Harideo Joshi on telephone. He also denied that Shri Harideo Joshi again rang him up after a few minutes after the first telephonic conversation.

7.282 Considering the evidence, the testimony of Shri Harideo Joshi on this aspect is more reliable. As according to him he had initially recorded in Hindi the gist of the order received by him from Shri Dhawan, which was later recorded in English after discussion with his officer. Shri Dhawan has admitted that he had carried out the directions of Smt. Indira Gandhi. According to him, he was handed over the CBI report which was read over to Shri Harideo Joshi by him on the telephone.

7.283 It appears that some notings in the file of Department of Personnel, Government of India, had been initiated early in the month of February 1975 with regard to the involvement of Shri Mangal Behari in the activities of Anand Marg. A list of Anand Margis had also been prepared by the Central Government and the names of Shri S. N. Sharma and Shri Mangal Behari were included in the list. If an intimation was received by the Prime Minister with regard to the CBI inquiry, nothing would have been easier

than to send a report in writing with regard to the intimation so received to the concerned Ministry in the Government of India and to the Chief Minister of Rajasthan. The steps taken of reading over to the Chief Minister, the entire report of the CBI on telephone containing a number of details would be unusual. It appears that no record was intended to be kept of the conversation between Shri Dhawan and the Chief Minister of Rajasthan and that is why Shri Dhawan rang up and informed Shri Harideo Joshi about the action to be taken by the letter against the four persons named in that report. It is purely a twist of circumstances that Shri Harideo Joshi recorded in the first instance, having regard to the multiplicity of details in the action intended to be taken, in Hindi of the intimation given to him and thereafter made a formal record of it in English after consultation with his officials. It is true that the Hindi version of the intimation was not maintained but there is no reason to disbelieve the testimony of Shri Harideo Joshi in that behalf, especially when the English version substantially contains the recommendations, which are made by the CBI in regard to the action to be taken against the four persons concerned and Shri Dhawan says that intimation was given on the telephone with regard to that report.

7.284 The involvement of Smt. Gandhi with regard to the action taken against Shri and Smt. S. N. Sharma, Shri R. N. Gaur and Shri Mangal Behari is clearly established by the testimony of Shri Dhawan as corroborated by the testimony of Shri Harideo Joshi and the various actions, which were taken with very great despatch on 20th of August, 1975 or soon thereafter.

7.285 When a formal notice was issued under rule 5(2)(a) of the Commissions of Inquiry Rules in regard to this matter, Smt. Indira Gandhi declined to file a statement, as required by the Rules. When the Commission asked her to enter the witness box and be examined under section 5(2) and a procedure analogous to Order X of the Civil Procedure Code, she declined to take the oath and refused to answer any question on the plea that she was not legally and Constitutionally bound to answer the questions. In the circumstances, it is open to the Commission to draw adverse inference against her.

7.286 The circumstances, which established ~~the~~ involvement, are, briefly these :—

- (i) that she received information that Shri S. N. Sharma was an Anand Margi and that Anand Marg was declared banned organisation;
- (ii) that even though Shri R. N. Gaur was informed about the burning of some records, he did not reach in time, nor tried to save the records;
- (iii) that Smt. Chandravati Sharma was also an Anand Margi and she was still continuing in employment as a public servant;
- (iv) that Shri Mangal Behari, an IAS officer was an active Anand Margi; and

- (v) the file of Shri Mangal Behari remained pending with the then Prime Minister's Secretariat from February 3, 1976 to December 8, 1976. There is no satisfactory explanation forthcoming for this inordinate delay.

7.287 In the absence of any explanation forthcoming from Smt. Indira Gandhi and on the evidence produced, the Commission is satisfied that she was responsible for (i) causing the termination of services of Smt. Chandrawati Sharma, Assistant Teacher, Government of Rajasthan, in violation of the Constitutional provisions; and (ii) the prolonged forced leave on which Shri Mangal Behari had to remain for about 16 months and for causing the attending hardships which ensued as a result thereof. She has thus misused her position, abused her authority and subverted well-established administrative procedures and lawful processes.

7.288 Shri Dhawan was served with a notice under rule 5(2)(a) of the Rules and a summons under section 8B of the Act. He responded to the summons. Shri Dhawan has taken the line that he merely read out the CBI report as directed by the Prime Minister, but did not indicate any specific action to be taken with regard to any of the individuals figuring in the note recorded by Shri Harideo Joshi. According to him this should be apparent from the fact that Shri Gaur was not suspended and Shri Mangal Behari was also not relieved from service but only sent on leave. If what he had conveyed to Shri Joshi were to be treated as orders, there was no reason why the operational aspects of these orders should have been interfered with, as in fact it was done in the two cases referred to above. This plea of Dhawan is not tenable inasmuch as for the deviation in both the cases, Shri Joshi and the Chief Secretary had obtained the clearance from Dhawan in one case and Shri P. N. Bahl, Joint Secretary in the PM's Secretariat in the other case for the eventual course adopted. Shri Dhawan did read out from the CBI note at the instance of the Prime Minister. The Commission feels that as in many other cases, Dhawan has been acting merely on orders and on that account it does not hold him responsible for the subsequent things that followed.

7.289 The Commission feels concerned about two important aspects figuring in this case.

7.290 The first is the manner in which the services of Smt. Chandrawati Sharma, who was only an Assistant Teacher, were terminated without the slightest fuss or protest and she remained removed from service till she was reinstated after the change of Government following the Lok Sabha and the Assembly Elections in March 1977. No functionary of the Government put up even as much as a note pointing out that the political activities alleged against her were not correct and that she was being kept out of service for no valid and understandable reason. As against this, totally indifferent and callous attitude, the manner in which the State Government officials rallied to the support of Shri Mangal Behari, an IAS officer, is indeed unique and is in striking contrast to the manner in which Smt.

Sharma was dealt with. How are we going to ensure that every employee of the Government regardless of their rank and status enjoys full security and protection of service? Until this is done, the manner in which these two functionaries of the Government were dealt with—one a low-placed Assistant Teacher, and the other a high-placed IAS officer—would be considered as an unpardonable and invidious distinction.

7.291 The second is with regard to the file that was maintained by the Intelligence Bureau against Shri Mangal Behari. The Commission had access to the Home Ministry file dealing with Shri Mangal Behari's activities with regard to Anand Marg. It is surprising how the various specific activities alleged against Shri Mangal Behari by the Intelligence Bureau were systematically demolished by the Rajasthan State C.I.D. It is the exonerating and alleviating reports of the State C.I.D. which enabled eventually the Government to take a lenient view of Mangal Behari and to allow him to continue in service. In the face of the consistent reports in favour of Shri Mangal Behari by the Rajasthan State C.I.D., even the Intelligence Bureau eventually veered round to the point of view which is evident from the report of the Director, Intelligence Bureau himself which runs as follows:—

“The activities of Shri Mangal Behari, as are known to us, remained confined to the spiritual and organisational fields of the Anand Marg. It is quite likely that Shri Behari was taken in by the spiritual pretensions of the Anand Marg without realising its true characters.”

7.292 If one had to go only by the initial Intelligence Bureau reports, it would have been difficult for Mangal Behari to have continued in service, as all the reports of the Intelligence Bureau were extremely damaging to Shri Mangal Behari. It was fortunate for him that the reports of his State C.I.D. were more factual than those of reports of the IB.

7.293 In this case, if the Department of Personnel of the Government of India did not have the benefit of the scrutiny of the IB reports by the reports obtained from the Rajasthan State C.I.D., it is quite likely that the Department going by the IB report alone could have come to certain conclusions which may not have been altogether helpful to Shri Mangal Behari. May be, this is one of the few cases where the IB report may not have been in complete conformity with all the facts. In this connection, the Commission would invite the attention of the Government to the report initiated by the IB on Justice R. N. Aggarwal and which came to be used by the Government to the detriment of Justice Aggarwal. As it transpired, the IB report on Justice R. N. Aggarwal was also not correct in certain material particulars. Considering, therefore, the risks involved and the damage that an adverse IB report can cause to an individual, both in terms of his reputation as also of his career prospects, the Commission recommends that the Government should take steps to ensure that every IB report

on the activities and material particulars of individual is correct.

19. Irregularities in initiating action resulting in search and seizure operations under the Income Tax Act in the case of two trade union leaders.

7.294 Sometime early in August 1975, Shri Harihar Lal met Shri D. Sen in the latter's office on Shri Sen's request. It would appear that Shri Sen passed on to Shri Harihar Lal certain information relating to one Shri Prabhat Kar who was at the relevant time the General Secretary of the All India Bank Employees Association and Shri D. P. Chadha who was the President of the same Association. Information in relation to Shri Prabhat Kar was that—

- (1) he received a remuneration of Rs. 2,000 p.m.;
- (2) he stayed in a house rent of which was borne by the Association;
- (3) the Association provided him with a motor vehicle;
- (4) in 1973 he received gifts totalling up to Rs. one lakh at the time of his daughter's marriage; and that part of the amount had been invested and deposited in Bank account;
- (5) he was receiving various other pecuniary benefits and had amassed wealth much beyond his known sources of income; and
- (6) lastly, he had a standard of living much above that warranted by his known sources of income.

7.295 In the case of Shri D. P. Chadha, the information was that—

- (1) he was drawing a salary over Rs. 2,000 p.m.;
- (2) he had purchased a flat in Punjab National Bank Housing Society near Lallubhai Park at Andheri in Bombay; and that
- (3) he may not be an income tax assessee.

7.296 In the case of Shri Prabhat Kar, Shri Harihar Lal made certain enquiries and found out that he was not being assessed to income tax and that it was not known in which Commissioner's jurisdiction he was assessable. Shri Harihar Lal, therefore, authorised search operations in the case of Shri Prabhat Kar u/s 132 of the Income Tax Act. In the case of Shri D. P. Chadha, Shri Harihar Lal passed on the information received by him to Shri O. V. Kuruvilla, the then Commissioner of Income Tax, Bombay City-1. On the basis of the information referred to above in this case, Shri O. V. Kuruvilla authorised search operations u/s 132 of the Income Tax Act in the case of Shri D. P. Chadha at Bombay.

7.297 Search operations in both these cases were carried out on the 13th August, 1975. While Shri Prabhat Kar had not been filing returns of income in regard to the remuneration received by him from the All India Bank Employees Association, it was seen that Shri D. P. Chadha was filing returns of income regularly and that all his assets were properly explained.

7.298 In the course of his testimony before the Commission, Shri D. Sen, the then Director of the C.B.I., stated that certain information in regard to S/Shri Prabhat Kar and D. P. Chadha, which he had recorded in a note dated 21-7-75, was furnished to him by Shri R. K. Dhawan, who had gone to Shri D. Sen's office. Shri Sen added that he had passed on the information to the Officer-in-Charge of the Intelligence Unit for verification and that as recommended by his Joint Director, he had passed on the information collected to Shri Harihar Lal.

7.299 In his written statement in response to the notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972, Shri Sen has stated that the information that S/Shri Prabhat Kar and D. P. Chadha were office bearers in various Bank Unions and that they extorted money for donations to various Union funds from the clients of the Banks and that they misused Union funds and were living in good style was received by him on or before 21-7-1975 from Shri R. K. Dhawan of the PM's Secretariat and Shri Om Mehta who was then the Minister of State in the Department of Personnel. He has added that at that stage he did not know whether S/Shri Prabhat Kar and D. P. Chadha were or were not public servants.

7.300 S/Shri R. K. Dhawan and D. Sen had also appeared in response to summons u/s 8B of the Commissions of Inquiry Act, 1952. They had also availed of the opportunity to make their submissions on the evidence adduced before the Commission. At both these stages, Shri R. K. Dhawan denied having given any such information to Shri D. Sen. In response to a query from Shri D. Sen, Shri Dhawan confirmed that he had been giving information of similar nature to Shri D. Sen on certain other occasions but denied that he had given any information in this case.

7.301 In the course of his testimony Shri Harihar Lal referred to the information as supplied by Shri D. Sen and said that when the information was coming from a source as important and responsible as the Central Bureau of Investigation, he believed that there was case for authorising search operations in the case of Shri Prabhat Kar. In the case of Shri D. P. Chadha, he had merely passed on the information to the concerned Commissioner of Income Tax at Bombay for necessary action.

7.302 After completion of the search operations, Shri D. Sen had recorded a secret note dated August 16, 1975, wherein he stated that he had given

information as indicated in the note to Shri Harihar Lal about S/Shri Prabhat Kar and D. P. Chadha and that on the basis of that information the houses of S/Shri Prabhat Kar and D. P. Chadha were "got searched" by Shri Harihar Lal. The note further adds—"a copy of his (Shri Harihar Lal's) report giving result of these searches is enclosed." It is not clear to whom Shri Sen had addressed this note. In his oral testimony before the Commission, Shri D. Sen has stated that he could not recollect to whom

the report was sent. He, however, mentioned that he might have sent it to Shri Om Mehta or to Shri R. K. Dhawan.

7.303 While the circumstances leading up to the search and seizure operations in these two cases no doubt appear to be somewhat unusual especially Shri D. Sen's role therein, no subversion of administrative procedure or misuse or abuse of power has been clearly established.

~~DELHI ONLY (ATTN: GM)~~

Self 167

~~GAL-NO-NO-11~~

~~RAM--PRESS:~~

CALCUTTA FEB 26 (SAMAGHAR): ~~THE~~ CONGRESS FOR DEMOCRACY
CHAIRMAN, MR. JAGJIVAN RAM, SAID HERE TODAY THAT HIS RESIGNATION
FROM THE CONGRESS AND THE UNION CABINET WAS FOR "POLITICAL
REASONS".

[THERE WERE NO NO "PRIVATE" REASONS FOR IT, HE SAID AT AN
A MEET- THE-PRESS PROGRAMME AT CALCUTTA PRESS CLUB WHEN
HIS ATTENTION WAS DRAWN TO CONGRESS PRESIDENT R. D. K.
BROOHA'S ^{REMARKS} REMARK ABOUT PRIVATE REASONS FOR HIS RESIGNATION.

[MR. RAM SAID THAT HE HAD FELT THAT ^{THE} DEMOCRACY WAS
DISAPPEARING FROM THE CONGRESS AND THAT ^{THE} FOS WERE ALSO BEING
TAKEN BY THE GOVERNMENT, WHICH WAS UNDEMOCRATIC.

[REPLYING TO A QUESTION ABOUT HIS STAND ON THE DECLARATION
OF THE EMERGENCY, HE SAID THAT AT ONE STAGE HE ^{HAD} SUPPORTED
IT BECAUSE ^{OF} ~~GENERAL~~ CLOSURE OF EDUCATIONAL INSTITUTIONS AND
INCITEMENT TO ARMY AND POLICEMEN TO REVOLT ~~WERE TAKING PLACE~~ ^{AT A TIME}. HE, HOWEVER, OPPOSED ITS CONTINUATION FOR LONG
WHEN HE FELT THAT IT WAS NOT (NOT) REQUIRED, BUT ~~HAD FOUND~~
THE PRIME MINISTER RELUCTANT TO LIFT IT, HE ALLED.

[ASKED HOW HE COULD NOW (NOW) SHARE THE SAME PLATFORM WITH
MR. JAYAPRAKASH NARAYAN SINCE THE LATTER HAD AT ONE TIME
ALLEGEDLY INCITED THE ARMY AND POLICEMEN TO OBEY ORDERS,
MR. JAGJIVAN RAM REPLIED THAT MR. NARAYAN HAD EXPLAINED HIS
POSITION THAT HE HAD NEVER INCITED THE ARMY AND POLICEMEN.

(MORE-SAMAGHAR)

SCB-NB-JS

26/2 TIME

2015 HRS. -

2035

183A

~~LEFT ONLY (ATTN GM)~~ *PR*

~~CAL NO NO 12~~ *Feb 21 76*

RAM - PRESS TWO --- CALCUITIA -- SAMACHAR:

TO A QUESTION ABOUT HIS BEING A PARTY TO THE AICC RESOLUTIONS ADOPTED AT THE GAUHATI SESSION IN NOVEMBER, MR. JALUJIAN RAM SAID THAT HE HAD SUPPORTED ONLY THE ECONOMIC RESOLUTIONS ON THE POLITICAL RESOLUTION, HE HAD NOT (NOT) SPOKEN, HE ADDED.

ASKE TO DEFINE ~~THE~~ SCIENTIFIC SOCIALISM, ~~CONTAINED~~ IN HIS PARTY'S MANIFESTO, MR. RAM SAID IT WAS PRACTICAL SOCIALISM SUITED TO INDIAN CONDITIONS AND NOT (NOT) "THEORETICAL SOCIALISM" OF THE CONGRESS AT PRESENT.

TO A QUESTION ABOUT HIS FOREIGN POLICY, ~~HE RETURNED TO POWER,~~ *if returned to Power,* MR. RAM SAID IT WOULD BE THE SAME POLICY AS AT PRESENT -- A RATIONAL POLICY OF FRIENDSHIP WITH ALL COUNTRIES.

ASKED WHETHER HIS PARTY WOULD COMPROMISE WITH THE CONGRESS IF MRS. INDIRA GANDHI WAS NOT THERE, MR. RAM SAID THAT THE CONGRESS WOULD UNDERGO A "BIG CHANGE" IF MRS. GANDHI WAS NOT NOT THERE. IT HAD TO BE SEEN AND NOTHING COULD BE SAID HYPOTHETICALLY, HE OBSERVED.

(MORE - SAMACHAR)

SCB-HB-08 26/1 TIME 2020 HRS.

183 B

RA

Sept 77 PL

~~DEPT ONLY (ATTN - RM)~~

~~CAL NO NO 49~~

RAM PRESS THREE LAST -CALCUTTA)

MR RAM TOLD A QUESTIONER THAT IF RETURNED TO POWER THEY WOULD FOLLOW CONSTITUTIONAL METHODS FOR BRINGING ~~about~~ ~~NOT~~ CHANGES. ~~THEY WOULD NOT NOT BE ABLE TO UNDO THE~~ ~~CONSTITUTIONAL METHODS FOR BRINGING ABOUT CHANGES. THEY~~ WOULD NOT NOT BE ABLE TO UNDO THE CONSTITUTIONAL AMENDMENTS ALREADY EFFECTED IF THEY FAILED TO GET THE REQUIRED TWO-THIRDS MAJORITY, HE SAID.

DEFINING HIS PARTY'S POLICY TOWARDS THE CPI (M), MR RAM SAID IN REPLY TO ANOTHER QUESTION THAT IT WAS PRESENT CONFINED TO SEAT ADJUSTMENTS TO DEFEAT THE CONGRESS. IN KERALA STATE ASSEMBLY ELECTION THE SAME POLICY WAS FOLLOWED BY HIS PARTY WHICH MIGHT EXTEND SUPPORT TO A C P I (M) GOVERNMENT FROM OUTSIDE, HE SAID.

ASKED ABOUT RISE IN FOOD PRICES IN SOME PLACES MR RAM SAID THE WHOLE COUNTRY KNEW HIS RECORD AS AGRICULTURE MINISTER. THE STATE HAD SUFFICIENT STOCKS OF GRAINS TO THE ORDER OF FEW LAKHS EACH AND IF THERE WAS ANY PRICE RISE, IT WAS DUE TO FAULTY DISTRIBUTION, WHICH WAS ENTIRELY THE RESPONSIBILITY OF ~~THE~~ RESPONSIBILITY OF STATE GOVERNMENTS, HE ADDED.

(SAMACHAR)

SCN MB/HM 06/9 0110HRS

2207 2127

183e

RRS

URGENT

BOM NO NO 9 DELHI ONLY FOR CLEARANCE.

SANJIVA TWO LAST—CUDDAPAH

MRS GANDHI, MR SANIVA REDDY SAID, WAS INTERESTED IN CONTINUING HERSELF IN POWER. SHE HAD BEEN IN POWER FOR THE PAST ELEVEN YEARS BUT HAD FAILED TO SOLVE MANY OF THE COUNTRY'S PROBLEMS.

~~REFERRING TO THE SUPERSESSION OF JUSTICE H.R. KHANNA OF SUPREME COURT IN THE MATTER OF APPOINTMENT OF THE CHIEF JUSTICE, MR SANIVA REDDI SAID THIS TENDED TO UNDERMINE THE PEOPLE'S CONFIDENCE IN THE JUDICIARY.~~

~~(HE SAID HE HAD BEEN ENTRUSTED WITH JANATA PARTY ELECTORNEERING WORK IN THE NORTHERN STATES.~~

~~HE WAS DIFFICULT BUT HE WOULD BE INSPIRED BY THE DEEDS OF LATE G. AMARAS. THE PARTY WOULD CERTAINLY FIGHT ELECTIONS IN TAMIL NADU, KARNATAKA AND ANDHRA PRADESH.~~

~~END. (SA 40147) 33/1 1801 HRS BLACK~~

1815 1820

~~BY 3 FOR DEL ONLY FOR CLEARANCE~~

~~DRAY TWO PUNE SAMACHAR~~

~~HE HELD THAT IF FURTHER STEPS TOWARDS RELAXATION REMAINED UNIMPLEMENTED, EXPECTING THE OPPOSITION PARTIES TO PARTICIPATE IN THE ELECTIONS, WOULD BE LIKE ASKING~~

~~THEM TO RUN A RACE WITH A HANDICAP.~~

~~ON THE PRIME MINISTER'S ANNOUNCEMENT YESTERDAY ON THE RELAXATION OF THE EMERGENCY, MR GORAY SAID "I NATURALLY WELCOME ANY STEP BY GOVERNMENT WHICH LEADS TO RELAXATION OF PRESENT EMERGENCY".~~

~~HE EXPECTED THAT GENERAL RELEASE OF POLITICAL PRISONERS WHETHER HELD UNDER MISA OR DIR, WOULD FOLLOW.~~

~~END SAMACHAR, KDJ NDP MNK 19/1 TIME 1603~~

WPK 1655 1615

From: Bhopal

Editor in charge, Newsroom, All India Radio
Bhopal .. it is desired that a story on the assault of
ex- local mla in Raipur should not be used. "

Message received at 02 10 hrs.

Raipur office had not filed the story till now.

V/

Urgent

for delhi only

but no one (for delhi's approval and 1..reissue-- give copy
attack

Raipur, Mar 19 (samachar):- the cpi mla, mr sudhir mukherjee
received injuries on his chin when he and mr purshotam Lal
Kaushik, Janata party candidate, were attacked at midnight
last night by some unknown persons.

A press note issued by the district administration said
police acted promptly and a case was registered against the
assailants. investigation was in progress.

~~the union information and broadcasting minister mr v c
Mukla is pitted against mr Kaushik socialist mla, in Raipur
constituency and cpi is supporting Janata candidate. polling is
to be held today.~~

The press note said that both mr Kaushik and mr Mukherjee
were given prompt medical assistance.

The district administration has appealed to the people
to extend their cooperation in maintaining peace and order
and help in conducting peaceful polls. people have been
cautioned against rumours and anti-social elements.

(samachar) - pnc km 205 hrs 19/3

~~FILE NO NO 4 (GWR 3)~~

~~(DEL) ONLY FOR APPROVAL AND REISSUE~~

FLINTA

MR. MEHTA WAS THIS EVENING ADDRESSING THE FIRST PUBLIC MEETING OF JANATA PARTY AT GWALIOR. YESTERDAY, MR. MEHTA SAID THAT WHEN THE JANATA PARTY CAME TO POWER, MRS. MOHINDER KAUR, FORMER MP FROM PATALEA COULD NOT BE PRESENT IN THE MEETING AS SHE HAD FEVER. IT WOULD SUITABLY AMEND THE CONSTITUTION ACCORDING TO THE WISHES OF THE PEOPLE. MR. MEHTA WAS ALSO RUNNING TEMPERATURE BUT ADDRESSED THE MEETING.

~~MR X-812A-1111~~

EARLIER, HE ADDRESSED PUBLIC MEETINGS AT BHIND AND MORENA
PARLIAMENTARY CONSTITUENCIES. *x* *for Samra*

MR MEHTA ACCUSED THE CONGRESS FOR AMENDING THE CONSTITUTION
SOLE RIGHTS SHOULD REMAIN WITH THE PEOPLE AND THE RESPONSIBILITIES ON THE
GOVERNMENT. WHY A PRIME MINISTER SHOULD NOT NOT BE MADE RESPONSIBLE
EVER AFTER OF HIS OR HER OFFICE FOR THE DEEDS IN GOVERNMENT ?
AMENDMENT MADE TO THIS EFFECT IN THE CONSTITUTION WAS ARBITRARY AND
WHEN THE JANATA PARTY CAME TO POWER , IT WOULD SUITABLY KZZAMENDED IT

CORR/PNG/RGD 0000HRS 23/2

ED/DLHI PLA CK ACK BPL NO NO UPTO FOUR TKS BPLRGD

AND BPL UPTO EIGHTEEN TKS

JJJJJJJJ KKKKKKKK LLLLLLLL

ED DELHI NOW ACK BPL UPTO EIGHTEEN AND BPL NO NO ONE TU FOUR
JUST RPTED YOU NOW TKS BPLNGD TIME 0200HRS TKS

Attn Desk

Any story from Raipur on the alleged assault of some persons should be referred to Mr WL before use.

GV/ 19.3.77 0510

524

urgent

for delhi only

not no no two

attack two last--- raipur

Mr Kaushik told newsmen that some persons attacked them with lathis when they along with some other workers were on round of the station area.

he said he was hit with lathis, fists and kicks and his kurta was torn off. Mr Mukerjee was hit by a knife which caused injuries on his chin, and he was removed to hospital. Another CPI leader Mr Ram Sahay Tiwari and some other Janata party workers were also injured, he added.

While Mr Kaushik described it a political attack, Congress circles said that it was a stage managed show with an object to take political advantage on election eve.

Congress appealed to the people not to be misguided by rumours spread by anti-social elements.

Heavy police arrangements have been made in the town and police patrolling intensified. Samachar

Corr. Eng. Kan / 2035 hrs 19/5

PHD. 310
2400